SUPREME COURT OF THE UNITED STATES.

No. ~~236~~. 115

THE HEIRS OF JOSÉ HIGUERA, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

1369

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1 *Transcript of the proceedings in case No.* 148. *The heirs of José Higuera, claimants, vs. The United States, defendants. For the place named "Los Tularcitos."*

2

3 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered that on this second day of April, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of the heirs of José Higuera for the place named "Los Tularcitos" was presented, and ordered to be filed and docketed with No. 148, and is as follows, to wit:

(*Vide* page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *September* 13, 1853.

In case No. 148, Antonio Higuera *et als.* for the place named "Los Tularcitos," the counsel for the claimants filed the following affidavit, to wit:

(*Vide* page 6 of this transcript.)

Whereupon moved to amend the petition taken under advisement.

4 SAN FRANCISCO, *September* 21, 1853.

In the same case, upon the motion of the counsel for the claimants filed heretofore, to wit, on the 13th inst., the following order was made, to wit: Ordered, that leave be granted to the claimant to file an amended petition, in accordance with the motion aforesaid, which amended petition, having been filed, is as follows, to wit:

(*Vide* page 4 of this transcript.)

SAN FRANCISCO, *November* 11*th*, 1853.

In the same case the deposition of Juan B. Alvarado, a witness in behalf of the claimants, taken before Commissioner Alpheus Felch, with documents marked A. F.. Nos. 1, 2, 3, 4 and 5, annexed thereto, was filed.

(*Vide* page 7 of this transcript.)

SAN FRANCISCO, *December* 13, 1853.

In the same case the deposition of José Romero, a witness in behalf of the claimants, taken before Commissioner Alpheus Felch, was filed.

(*Vide* page 11 of this transcript.)

SAN FRANCISCO, *March* 29, 1854.

In the same case the depositions of Carmen Sibrian de Bernal and
5 José Castro, witnesses in behalf of the claimants, taken before Commissioner Peter Lott, were filed.

(*Vide* pages 19 and 13 of this transcript.)

SAN FRANCISCO, *November* 21, 1854.

Case No. 148 was submitted on briefs and taken under advisement by the board.

SAN FRANCISCO, *November* 28, 1854.

In the same case Commissioner Alpheus Felch delivered the opinion of the board confirming the claim.

(*Vide* page 53 of this transcript.)

And the following order was made, to wit:

(*Vide* page 59 of this transcript.)

Petition.

To the hon. the board of land commissioners to ascertain and settle the private land claims in the State of California:

The petition of Antonio (S.) Fulgencio, Dolores, Valentin, Mariano, Josefa, Encarnacion, Florencio, Micaela, Rita, Refugio and Agustin de Higuera,
6 states that on the 4th day of October, A. D. 1852, Pablo Vicente de Sola, governor of the province of California, in the exercise of powers in him vested and by virture of the laws then in force, granted to José Higuera, (father of these petitioners,) a tract of land called De los Tularcitos, situated in what is now known as the county of Santa Clara and State of California, and bounded and described in the expediente of said land, a copy of which said expediente is herewith filed, marked Exhibit A, and a translation thereof is also herewith filed, marked Exhibit B; that in the year 1845, or thereabout, the grantee, José Higuera, died, intestate; that Fulgencio Higuera, Valentin Higuera, Mariano Higuera and Florencio Higuera, are the sons, and Antonio Higuera, Dolores Higuera, Josefa Higuera, Encarnacion Higuera, Micaela Higuera, Rita Higuera and Agustina Higuera, are the daughters, and the said sons and daughters are the legitimate children and heirs of said José Higuera, de-
7 ceased; that the said tract of land contains the quantity or extent set forth in its respective espediente, (a copy of which is now filed;) that the said grantee and these, the said petitioners, were and have been in the continued and uninterrupted possession of land aforesaid since the date of said grant; that this said land has not been surveyed by the surveyer general; that there is no known interfering claim; that these, the said petitioners, rely for the support of the claim herein mentioned upon the papers now submitted, the evidence to said claim existing in the archives of the former governments, now under the charge of Surveyor General King, and all such other proof as may be pertaining to said claim.

These petitioners pray that this hon. board will hear such evidence as may support this claim, and decree a confirmation of said claim.

THOS. B. GODDEN, *Attorney.*

Filed in office April 1st, 1852.

GEO. FISHER, *Sec'y.*

8 *Supplementary petition.*

No. 148.—Amended petition filed by leave of the board on motion founded upon affidavit.

The claimants, Antonio Higuera, Fulgencio Higuera, Valentine Higuera, Mariano Higuera, Florencia Higuera, Dolores Higuera, Josefa Higuera, Encarnacion Higuera, Micaela Higuera, Rita Higuera, Refugio Higuera and Agustina Higuera, the children and heirs of José Higuera, deceased, respectfully state

that on the 4th of October, 1828, a grant was made by Pablo Vicente de Sola, then governor of California, to their father, the said José Higuera, for a tract of land called De Los Tularcitos, which is particularly described and bounded in the expediente herewith filed. They also state that afterwards, upon their petition to the succeeding government of Mexico, the said grant made by the former government by Sola was recognized by Governor Alvarado, under the Mexican authority, on the 14th day of February, 1839, who, also, at the same time, in addition to the piece of land granted by Sola, granted in aug-
9 mentation or extension of the same, as will fully appear by the documentary evidence of title and the map ordered, constituting the espediente of the whole quantity now claimed, which is herewith filed, marked exhibit A, being the same endorsed as espediente, and as filed in the office of the secretary of the honorable board May 21st, 1853, and of which the translation is herewith filed, marked B.

These claimants respectfully state that by these ancestors, the grantee, and by themselves since his death, there has been occupation and residence upon, and cultivation of, the said land ever since its grant to the present time. They do not know of any adverse title, and humbly pray for the confirmation to them of whatever may seem right and equitable in the premises.

By attorney for claimants: H. J. THORNTON.

Filed in office Sept. 21, 1853.

GEO. FISHER, *Sec'y.*

10 *Affidavit of claimant.*

This day appeared in proper person Valentine Higuera, a claimant in the case No. 148, who, being duly sworn, states that under the act of the 3d of March, 1851, to ascertain and settle the private land claims in the State of California, he put all the documents containing his title in the hands of the late Thema Godden, an attorney at law, and employed him to present the same to this honorable board. This affiant states that he is now informed that by some mistake in the petition filed before this board, the description of the land owned by him differs from the map filed with the said petition, and from the espediente of his title, also on file, as the evidence of his claim. The mistakes consists in omitting in the petition the mention of the limits, as contained in the map and in the espediente of the whole tract, and inserting a part only, which was evidently a mistake, as the inspection of the papers on file will clearly shew.

The whole claim is presented, but *its description* is erroneous in the
11 petition; that portion of the grant on which are the improvements and residence of the family being not embraced in the said deposition.

BALENTIN HIGUERA.

Subscribed and sworn before me this 12th September, 1853.

ALPHEUS FELCH,
Commissioner.

Filed in office Sept. 13, 1853.

GEO. FISHER, *Sec'y.*

Dep. of Juan B. Alvarado.

OFFICE OF THE BOARD OF COMMISSIONERS, &c., &c.,

This day before Commissioner Alpheus Felch came Juan B. Alvarado, a witness in behalf of Antonio Higuera *et al.*, No. 148, who, after being duly sworn, deposed as follows; the witness spoke in the Spanish language, and his evidence was interpreted by Mr. Fisher, the Secretary:

Questions by attorney for the claimant.

1 question. What are your name, age, and place of residence?

Answer. My name is Juan B. Alvarado; my age forty-four; and I
12 reside in Contra Costa county, in California.

2 question. Are you acquainted with José Higuera, and with the rancho Las Tularcitos claimed in this case?

Answer. I knew José Higuera in his life time. He died some five years ago. I know the rancho named in the interrogatory.

3d question. Are the claimants in this case the children and heirs of said José Higuera?

Answer. They are.

4th question. Look on the document now here presented to you, purporting to be an original grant from Governor Sola, and another grant in augumentation by Governor Alvarado to José Higuera, together with a map and other documents connected with said grants, marked "Exhibit No. 1," with the initials A. T., and annexed to the deposition, and state whether the said paper, so far as relates to the grant by Sola, is not the original paper presented to you
13 and acted upon by you when you made the grant executed by you, and contained in said document.

Answer. I have examined said document, and answer the question in the affirmative.

5th question. Please state whether Governor Sola and yourself were not acting as Governor of California, respectively, at the date of these grants?

Answer. We were.

6th question. Are you acquainted with the handwriting of Narciso Duran, Buenavistara Forturez, Luis Peralta, and Sola, who was then governor? If yea, look on the document, above mentioned, and state whether the signatures of said persons wherever they occur thereon are, or are not, their genuine signatures.

Answer. I have examined said document, and recognize said signatures as the true and genuine signatures of those persons, respectively. I have often seen them write, and know their several signatures. My own signature to the
14 last grant contained therein is genuine, and also that to the decree of concession therein is mine. Both were written by me on the day when said instrument bears date.

7th question. Please look on the map here presented, being part of the document above mentioned, marked Exhibit No. 1, and state what you know of the occupation and possession of the land therein delineated, both that of the original grant and of the augmentation by your grant, by the said José, and by his family since his death.

Answer. I have looked on the map. It is a sufficient, fair representation of the land embraced in both these grants. José Higuera lived on the land, to my knowledge, upwards of twenty years ago; I know that he lived there in 1831, and he continued to live on the place until he died. He had a house on the land and lived there with his family during that time. He cultivated the land, had fruit trees and a vineyard on it, and had there a stock of cattle, horses, and
15 sheep. His family have continued living there to the present date. The occupation and possession above spoken of embraced both the land covered by the original grant and the augmentation.

8th question. Look on the paper now presented to you, marked "Exhibit No. 2," with the initials "A. F.," and hereto annexed as a part of this deposition, and state whether you know the handwriting of José Castro; and if yea, whether the signature to said document is the true and genuine signature of said Castro.

Answer. I have looked on said document; I know the handwriting of said

Castro; the signature on this document is his genuine signature. I have often seen him write, and know his handwriting.

9th question. Look on the document now presented to you, marked "Exhibit No. 3," with the initials "A. F.," and hereto annexed as a part of this deposition, and state whether the signature thereto is your own signature and handwriting.

10th question. Look on the document now presented to you, marked
16 "Exhibit No. 4," with the initials "A. F.," and annexed to this deposition, and state whether the signature thereto is your own true and genuine signature?

Answer. The whole document is in my handwriting, and the signature is mine, and was made at the date appearing by the document.

11th question. Look on the document now presented to you, marked "Exhibit No. 5." with the initials A. F., and annexed to this deposition, and state whether you know the handwriting of Juan Alvirez; and if so, whether the signature on said document is genuine, and whether he was the alcalde to whom you, as governor, referred the question of disputed boundary between José Higuera and Alviso.

Answer. I know the handwriting of said Alvirez; the signature to this document is his genuine signature. He was the alcalde to whom I referred the controversy above mentioned.

JUAN B. ALVARADO.

Mr. Greenhow, associate law agent, was present at the taking of this deposition, but prôpounded no question to the witness.

17 Subscribed and sworn to before me this eleventh day of November, A. D. 1853.

ALPHEUS FELCH, *Com'r.*

Filed in office Nov'r 11, 1853.

GEO. FISHER, *Sec'y.*

Dep. of José Romero.

OFFICE OF THE BOARD OF U. S. LAND COMMISSIONERS, &c., &c.,
San Francisco, Dec. 3, 1853.

This day before Com'r Alpheus Felch came José Romero, a witness in behalf of the claimant, Antonio Higuera, Petition No. 148, and being duly sworn, his deposition being in Spanish, was interpreted by the sec'y, as follows:

Questions by claimant's attorney.

Quest. 1st. What is your name, age, and place of residence?

Answer. My name is José Romero; my age is fifty-three years; and residence, San José, in California.

18 Quest. 2d. Are you acquainted with the rancho called Los Tularcitos, claimed in this case; if yea, state all you know concerning its occupation and cultivation by the original grantee, and by his heirs since his death.

Answer. I know the rancho, one and a half leagues from San José; I have known the place since 1822; it was then occupied by José Higuera; he was then building a house on it. I did not see the house, but he told me he was building a house on it. I first saw the place in 1824; all I know about it before that time was what Higuera told me. In 1824 I was on the place, and then there was a house on it, and the children of said Higuera lived in it. He was himself the mayor domo of the mission of San José, and he and his wife lived at the mission with the small children. Valentine, the oldest son, lived on the rancho. I know that José Higuera and his family afterwards lived on the place;

I do not know when they went to live there, as I went away to the lower part of the country; and when I returned, in 1828, they were living on the
19 place. He had on it at that time a large adobe house covered with tule, and had corrals and fences around his fields. He raised a considerable quantity of wheat, with which he carried on trade with the Russians. He had cattle and horses on the rancho; he lived there with his family until he died; his wife also died on the place before him; the family have continued to occupy it ever since. There are four, five, or six houses which they have built from time to time on different parts of the place.

Questions by Mr. Greenhow, associate law agent.

1 question. Did you understand that José Higuera was the owner of this tract of land at the time when you first knew him upon it?

Answer. He told me that it belonged to him, and that he was then making a settlement upon it.

his
JOSÉ + ROMERO.
mark.

Subscribed and sworn before me this third day of December, 1853.

ALPHEUS FELCH, *Com'r.*

20 Filed in office Dec'r 3, 1853.

GEO. FISHER, *Sec'y.*

Dep. of José Castro.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *March* 29, 1854.

This day personally came before Peter Lott, a commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, Don José Castro, a witness on behalf of the claimant in case No. 148 on the docket of said board, in which Antonio Higuera *et al.* are claimants, and the said José Castro, being duly sworn on oath, deposed in Spanish, which was interpreted into English by the interpreter of said board as follows, to wit:

The U. S. associate law agent is present.

Questions by J. J. Williams, esq., attorney for claimants.

21 1 question. What is your name, age, and present place of residence?

Answer. My name is José Castro; my age 45 years; my place of residence Monterey, California.

2 question. Are you acquainted with the rancho called Los Tularcitos, claimed in this case? If so, state what you know in regard to its occupation by José Higuera, the original grantee.

Answer. I am acquainted with the rancho. I know that since the year 1824 I have seen the land occupied by José Higuera. He had houses on the land, a portion of it enclosed and under cultivation; an orchard and corrals; he had horses and cattle also on the land. The said José Higuera continued in the possession till the time of his death, and ever since that his heirs have occupied the place, and still do.

3. question. Do you know the boundaries of this ranch? If yea, state them.

Answer. I do not know the boundaries; they are stated in the documents.

22 4 question. Look at the map now shown you contained in the document marked No. 1, A. F., annexed to the deposition of Juan B. Alvarado,

filed in this case, and state whether or not the boundaries are correctly delineated thereon?

(The U. S. law agent objects to this question as leading the witness.)

Answer. The boundaries of the rancho are accurately delineated on this map. The boundary begins at the principal house, and runs north about 2 leagues and a half to near the top of the Sierra, thence east about two leagues, thence south about two leagues and a half, with the line of José Maria Alviso; this is the upper portion of the land; the part in the plain is bounded on the east by a continuation of the east line bordering Alviso, a distance southerly about 5,000 varas, till it intersects the Arroyo de Penitencia, thence up said arroyo to an (estero) estuary; these are the boundaries of the land I have seen occupied by the Higueras.

Cross-examined by the U. S. law agent.

23 1 question. How far do you reside from the rancho of Tularcitos, and how long have you resided there?

Answer. I resided about 40 leagues from the place, and have lived where I now do since about the year 1843.

2 question. Where did you first know the rancho Los Tularcitos?

Answer. Since the year 1824.

3 question. About how often have you visited the rancho since that time?

Answer. Many times; perhaps about 25 or 30 times.

4 question. How many houses had Higuera on the land, and of what description were they?

Answer. When I first knew the place Higuera had two houses there. I do not recollect the materials of which they were built; they were close together.

24 5 question. Were the boundaries pointed out to you when you first knew the land?

Answer. I was then a young man; they were not pointed out to me when I first knew the place, but I used to be about the place with the sons of Higuera, and they showed me the boundaries. I am acquainted with the locality, and learned the boundaries also from the documents.

6 question. When did you first see the documents, and how often have you seen them?

Answer. This is the first time I have ever seen them here to-day.

7. question. What boundaries in the documents do you recognise as the same shown you as the boundaries of the rancho Tularcitos?

Answer. I have already answered that.

8 queston. What is the boundary of the rancho on the north, and what landmarks are there?

25 Answer. I cannot state from memory, but give me the map and I can show them.

(The map was here shown to the witness.)

And he says: I do not feel competent to state what landmarks were placed, as I did not see the juridical possession given. I cannot tell more from the map than otherwise. I know the general boundaries, and cannot state more particularly than I have done.

9 question. How do you know that the boundaries of the rancho are accurately delineated on the map?

Answer. For the reasons I have before stated, that the sons of Higuera, and sometimes Higuera himself, have frequently, when I was visiting the family, pointed out the boundaries to me.

10 question. When were the boundaries first pointed out to you, and by whom?

Answer. In 1824 or 1825, I was there with my father and mother, and José

Higuera and his sons then showed me the lands. I recollect Valentine,
26 one of the sons of Higuera, and the father José Higuera himself showed me. I was there at that time about 15 days, and different members of the family rode about with me from place to place on the land, and pointed out to this hill, and that as the bounds of their rancho. I was there merely as a friend, not in any official capacity, and there was no particular examination of the boundaries. I have since that time learned nothing more definite of the boundaries than what I have already stated.

11 question. In your answer to question 4, in your chief examination herein, you have described particularly the boundaries of the rancho. Did you learn those boundaries at the time of your visit above named?

Answer. I did; I was on the land with the owners, and they showed them to me.

12 question. Was your said answer to question 4 given from the memory of what you learned at the time of the visit you have mentioned?

27 Answer. I am well acquainted with the locality. I have been often over the lands, and know almost every hill and dale on it and ravine; and from my acquaintance with the land and information regarding the boundaries, the map presents itself to me as a true delineation of the boundaries.

13 question. How far is that land from the Pacific ocean, and how far from the navigable waters of the bay of San Francisco?

Answer. It may be about 20 or 25 leagues from the Pacific ocean, and from the water's edge of the bay of San Francisco about one league.

14 question. Are you well acquainted with Governor Alvarado's mode of doing business, and did you ever know him to issue a grant which was not signed by his secretary? and whether it was not a uniform practice to make a note in the proper book of the issuance of the grant, and state the same on the document delivered to the interested party?

28 (This question objected to by the attorney for claimants on the ground that it relates to no matter embraced in the examination in chief.)

Answer. I am not acquainted with Governor Alvarado's mode of doing business. I do not know of any grant issued by him without the signature of his secretary. I issued grants as governor without my secretary's signing them. Gov'r Alvarado and others may have done so. I do not know whether they did or not.

JOSÉ CASTRO.

Subscribed and sworn to before me on this 29th day of March, A. D. 1854.

PETER LOTT,
Commissioner for taking testimony, &c.

Filed in office March 29, 1854.

GEO. FISHER, *Sec'y.*

29 *Dep. of Doña Carmen Sibrian de Bernal.*

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *March* 29, 1854.

This day personally came before Peter Lott, a commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, Doña Carmen Sibrian de Bernal, a witness on behalf of the claimant in case No. 148 on the docket of said board, in which Antonio Higuera *et al.* are petitioners, and the said Carmen Sibrian de Bernal, being duly sworn, deposed on oath in Spanish, which was interpreted into English by the interpreter of said board as follows, to wit:

The U. S. law agent is present.

Questions by J. J. Williams, attorney for claimant.

1 question. What is your name, age, and present place of residence?

Answer. My name is Carmen Sibrian de Bernal; my age is forty-eight years; my residence at the mission Dolores, in this county of San Francisco, California.

30 2 question. Are you acquainted with the rancho called Los Tularcitos, claimed in this case? If so, state what you know in regard to its occupation by José Higuera, the original grantee.

Answer. I am acquainted with the rancho. I have known it about 32 or 33 years. When I first knew it it was occupied by José Higuera. He then had on it a wooden house, a small house; corrals, too, I think; a considerable portion of the land enclosed and cultivated. He had cattle and a great many horses on the ranchero. When I first knew the place there was a house at the place called Calaveras, on the same rancho; two corrals and some of the land inclosed and cultivated. Cattle and horses were kept at the same place. About a year afterwards José Higuera built a large adobe house at the foot of the hill. At the same time he built two other houses for his sons near the first adobe house. They had corrals at the same place, and lands enclosed and cultivated on the plain. They soon after set out an orchard. José Higuera occu-

31 pied the place till he died; since that his children have occupied it till *he died; since that his children have occupied it till* the present time. I lived on the place five years myself; the dates of my residence there I cannot state; but it was the first five years of my acquaintance with the place, about 32 or 33 years ago.

3 question. Are you acquainted with the boundaries of the *this* land claimed by José Higuera? If so, state them.

Answer. I am acquainted with the boundaries. It begins at the back of the house at the foot of the hill. The lines run northerly to a live tree (chamiss) at the top of the sierra, which tree can be seen from the house. Don José Higuera has pointed this tree out to me as his boundary, and he told me the line ran from that tree to the other side of Las Calaveras, from beyond the Calaveras down the rear of the house of José Alviso. That line continues to the Arroyo de la Penitencia, and from where it strikes the creek it runs to an estuary, (estero,) and from thence to the place of beginning. I learned

32 these boundaries five or six years after I lived there. I mean the boundaries of the lower part. Out in the plain, on the side of the line, the boundary of the Alviso, there is also an arroyo.

Cross-examined by the U. S. law agent.

1. question. What is the shape of the land you have just described?

Answer. It is somewhat like a parallelogram. I think it is longest from north to south, about two to three leagues from the tree to beyond Las Calaveras in the longest side; the width is, perhaps, one league.

2 question. Is the northern portion of the boundary of the rancho a straight or a crooked line?

Answer. I think it is a crooked line—I mean the line from the house to the tree.

3 question. How far does it diverge from a straight line, and in what parts of that line is the variance greatest?

33 Answer. I do not know, and cannot fully understand the question.

4 question. State particularly each landmark of the boundaries forming the rancho Los Tularcitos.

Answer. From the tree I have already mentioned all along the top of the Sierra, I have never been all over the land, Higuera showed me that tree,

and told me his land ran from that to beyond the Calaveras, and from there down by the house of Alviso to the arroyo, and to the estero, and then round up to the house. I know of no other landmarks.

CARMEN SIBRIAN DE BERNAL.

Subscribed and sworn to before me on this 29th day of March, A. D. 1854.

PETER LOTT,
Commissioner for taking testimony, &c.

Filed in office March 29, 1854.

GEO. FISHER, *Sec'y.*

34 *Expediente.—Exhibit A, to amended petition marked No. 1, A. F., and annexed to the dep. of J. B. Alvarado.*

MONTEREY,
30 *de Abril de* 1821.

Para providencia en justicia la solicitud en el contenido en esta instancia presenta con ella ante el Capn. D. Luis Anto. Arguello y á los R. R. P. P. Mutro de los Missions. de S. Fran'co Sta. Clara y Sn. José y comisionado del Pueblo de S. José pa. qe. a continuacion en este provido me informen lo ql. tengan pr. conbeniente en usticia y concluida esta diligencia ocurrirá con este documento pa. ql. resuelva este govro.

SOLA.

SOR. GOV'R Y COMAND'TE YNSP'OR: José Higuera, soldado ymbalido de la compañia de caballeria del Re. Presidio de S. Fran'co con el mas profundo respeto, y subordinacion que de be hace á V. S. presente, ql. habiendo subido á S. M. (Q. D. G.) en la ylustre carrera militas 25 años, h'ta llegas á alcansas d'ha gracia, y en la actualidad hallarse de mayor domo en la Mision de S. José. Por lo ql. ruega y suplica á la superioridad de V. S. se sirba concederle el sitio de los Tularcitos pa. radicarse en el y poner sus vienes de Campo; dicho parage no incomoda ni prejudica a nadie ni á la referido Mis'on de S. José ni tampoco al pueblo y espera se sirra V. S. por un efecto de su bondad concederle d'ha gracia, en atencion á hallarse con
35 tan cresida familia: Por tanto A. V. S. suplica rendidam'te se digne probeá favor del interesado, gracia y merced que espera recibir de su piadoso corazon su menor subdito ql. atto B. S. M.

El suplicante.

En consequencia al superior decreto del Sor. Gov'or ql. antecede debo decir por mi parte y pr. la Mis'n de Sn. Fran'co qe. no corresponde el citio ql. pide la parte contenida en esta instancia pr. estar segun entiendo fuera de la jurisdiccion de este presidio.

San Fran'co, 29 de Junio de 1821.

LUIS ANTONIO ARGÜELLO.

Ala vuelta.

MISION DEL SR. SN. JOSÉ,
29 *de Julio de* 1821.

A consequencia de la providencia qe. antecede del Sr. Gob'r y á nombre de esta mision decimos; que el parage que pide el mayor domo no perjudica á esta mision y que por consigte no hay embarazo en que se le conceda.

FR. NARCISO DURAN, *F. B.*

MN. DE STA CLARA,
30 *de Julio de* 1821.

El paraje que pide el suplicante no pertenece ni menos perjudica á
36 esta mn. y lo firmo.

FR. JOSÉ VIADER.

En obedicemto. al superior dereto qe. hantecede del Sor. Gov'or devo decir y digo qe. el parage de los Tularcitos qe. solicita el suplicante dista de este pueblo

como dos leguas poco mas baunque esta en la jurisdiccion de d'ho pueblo, no ha yincombeniente para qe. se le conceda al suplicante respecto á qe. no perjudica, y ser hombre de bien, de buena conducta y servicios en la carrera militar.

Pueblo de Sn. José 1'o de Agto de 1821.

LOUIS PERALTA.

Por virtud de la presente solicitud que el invalido José Higuera hace ante el Sor. Gov'or del parage de los Tularcitos qe. esta en la jurisdiccion de este pueblo con f'ha 1'o del corriente manda S. Sa. al Sarg'to Louis Peralta comisionado de d'ho pueblo lo aga saber al alcalde regidores y vecindario pa. qe. sitienen qe. decir algo aserca de d'ho pasage lo agan por conducto de d'ho Sargto. ó
37 del alcalde y en cumplimt'o de la superior orden se congregó el vecindario á quienes y á mi y regidores nos lo hizo saber preguntando á todos si las perjudicaba y si se le podia ó no conceder al suplicante el d'ho parage de los Tularcitos á lo que yo y regidores y vecindario decimos que desde luego se le puede conceder pr. qe. no perjudica y para qe. conste pr. no saber firmar pongo la señal de la leruz en el Pueblo de Sn. José en 11 de Sep'e de 1821.

Alcalde AUGUSTIN NARVAES.†
1'o Regidor JUAN HERNANDEZ.†
2'o TOMÁS ESPINOSA.†

OCTUBRE 4, de 1821.

Ponganle en posicion á José Higuera del parage nombrado de los Tularcitos, p'r el comicionado del pueblo de S'n José en cuya jurisdiccion se halla, previo, tiradas los medidas, y puestas mohoneras por los quatro rumbos, havisando á este govierno, las varas que por cada uno de ellos se le hallan señalado para que concluido este acto, expida el correspond'te titulo de posicion.

SOLA.

A 23 de Octu'e de 1821, en cumplim'to del superior decreto que han-
38 tecede del Sor Gov'or de la Pov'a Coron'e D'n Pablo Vicente de Sola, manda se le de posecion del citio nombrado los Tularcitos al soldado invalido José Higuera q'e lo solicito. Pasé á d'ho citio yo presencia de tres testigos Mariano Duarte Joaq'n Buelna, y Florentino Archulita y en vista de no perjudicar este yndividuo y en virtuo de la facultad q'e me es conferida y en nombre de N. soverano el Sor D'n Fernando 7'o q'e D. G. de posecion del referido citio al d'ho soldado ynvalido José Yguera, señalandole por la porte del sur seiscientas varas, por el norte lo mismo. Por el poniente seis mil cincuentas y por el poniente seis mil cincuentas cuyo hambito quedo comprendido al espresado citio de los Tularcitos.

Ypara q'e en todo tiempo conste lofirmo con los de assit'a, en d'ho dia mes y año.

LUIS PERALTA.

MARIANO DUARTE,
JOAQUIN BUELNA,
JOSÉ FLORENTINO ARCHULETA.

(Here follows diseño.)

39 Diseño de los Tularcitos y agregado el llano que ocupó 14 años y pretendido por José Higuera.

(Here follows map page 39.)

40 Sello tercero, dos reales.

Habilitado provicionalmente por la administracion de la Aduana Maritima de Monterey de la Alta California, para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

ANGEL RAMIREZ.

CASTRO.

MONTEREY.
Sep. 23 *de* 1837.

Suspendase la posecion que se diera, diera en parte de alvisu mientras tanto se busca el medio de la cancelacion de una y otra parte.

ALVARADO.

SOR GEFE SUP'R POLITICO: El ciudadano José Higuera, soldada inbalido de la compañia del pto de Sn. Fran'co, y vecino del Pueblo de Sn. Jose Guadalupe ante V. S. con el devido respeto y conforme haya lugar en derecho digo: que haviendo obtenido por decreto de 30 de Abl de 1821, concesion del parage llamado los Tularcitos como igualmente la posicion respectiva para cuya justificacion acompaño à esta el documento correspondiente y deceando la rectificacion y aprovacion correspondiente del citado terreno con el aumento que manifiesta el diceño adjunto de cuyo parte obtude licencia del Ayuntamiento de dicho pueblo de Sn. José con
41 mas de doce años que ha que lo fomento y lo tengo ocupado como podre justificar.

Mas haviendo sabido que al C. Jose M'a Alviso, inadvertidamente se le ha concedido una parte de mi terreno le suplico A. V. S. se sirva dar á esta mi solicitud el tramite que tenga á bien a finde que se me conceda el dicho parage que segun el citado diceño manifiesta, p'r tener á el el derecho de ocupacion p'r mas de doce años como he expuesto con licencia de d'ho Ayuntamiento.

A. V. S. suplico, se sirva acceder á esta mi peticion en lo que recibira gracia jurando lo necesario.

Monterey, 17 de Oct. de 1835.

JOSÉ HIGUERA.

MONTEREY, *Jub'o* 14 *de* 1839.

Ynformado este Gob'no de que el interesado en esta representacion ha arreglado con su colinaante José M'a Alviso los dificultades ocurridas entre ambos por las cuales se mandó suspender la posicion de dicho Alviso del terreno del rancho de su propiedad en decreto de 23 de Sep're, de 1837, y en consideracion al tiempo de la ocupacion pacifica que ha disfrutado durante.

42 Sello tercero, dos reales. Habilitado provicionalmente por la administracion de la aduana maritima de Monterey de la Alta California para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

CASTRO.
ANGEL RAMIREZ.

te tantos años José Higuera he venido en acceder á la pretencion antecedente concediendole en propiedad el documento de tierra solicitado en virtud de este decreto cuyo parte de terreno sera considerada como anexa á la concesion del Sór Gob'or D'n Pablo Vicente de Sola Asi yo Juan B. Alvarado Gob'or constitucional del departamento de las Californias lo mandé y firme.

ALVARADO.

Filed in office May 21, 1853.

GEO. FISHER, *Sec'y.*

1383

43 EXHIBIT B.

[Translation.]

"*Rancho de los Tularcitos*," *granted by Governor Sola to José Higuera*, 1821. *(County of Santa Clara.)*

Valentine Higuera and others heirs of the grantee.

TO THE GOVERNOR COMMONDANT INSPECTOR JOSÉ HIGUERA: An invalid soldier of the cavalry company of the royal garrison at San Francisco, dutifully and respectfully appears and sets forth to your worship, that he has served his majesty (whom God protect) in the illustrious career of a soldier for 26 years, and obtained the grace of being at the moment mayor domo of the mission of San José, wherefore he prays and entreats that your worship, in your superior power, may grant him the tract de los Tularcitos, in order that he may settle and place his goods thereon. This tract will not be a loss or detriment to any one, neither to said mission of San José, nor to the pueblo, and he hopes that in result of your worship's goodness you will accord this favor in view of his numerous family.

Therefore, he submissively entreats your worship to determine favor-
44 ably to the petitioner a grace and bounty which he expects to achieve from your liberal heart.

Your least subject that Q. B. S. M. El suplicante, (the applicant.)

MONTEREY, 30th, 1821.

As a legal step, let the petition herein contained be referred to Captain Don Lewis Antonio Arguello, to the father ministers of the mission of San Francisco, Santa Clara, and San José, and to the commissioner of the Pueblo of San José, that they, in continuation of this decree, may inform me what they deem suitable in justice, and when this is executed the party in interest will appear with the document that this government may act.

SOLA.

Pursuant to the superior decree antecedent, it is my duty to state for myself and for the mission of San Francisco, that the tract solicited by the petitioner in the premises is exempt, for as I understand it is outside of the district of the garrison.

SAN FRANCISCO, *June 29th*, 1821.

45 LUIS ANTONIO ARGUELLO.

MISSION OF SAN JOSÉ, *July* 29, 1821.

Pursuant to the proceeding decree of the governor, and in the name of this mission, we say that the tract solicited by the mayor domo will be of no prejudice to this mission; consequently there is obstacle to it being granted to him.

Friar NARCISO DURAN.
BUENAVENTURA FORTUNE.

MISSION OF SANTA CLARA, *July 30th*, 1821.

The tract solicited by the petitioner belonged not, less is it of prejudice to this mission. I accordingly sign.

Friar JOSÈ VIADEZ.

In obedience to the proceeding superior decree of the governor, I must and do say that the tract of the Tularcitos solicited by the petitioner is distant from

this pueblo about a little over two leagues, and although it is within the domain of said pueblo, there is no obstacle to its being granted to the petitioner,
46 inasmuch as he will not injure, and he is an honest man of good conduct, and has served in the army.

PUEBLO DE SAN JOSÉ, *August* 1*st*, 1821.

LEWIS PERALTA.

In virtue of the present petition which the invalid José Higuera makes to the governor for the tract of the Tularcitos, situate in the jurisdiction of this pueblo, with date of the 1st of this month, his worship orders Lewis Peralta, sergeant and commissioner of said pueblo, to make the same known to the alcade, regidors, and inhabitants, so that if they have anything to remark relative to said tract they may so do through said sergeant, or the alcade.

In pursuance of said superior order the inhabitants were assembled, the matter to me to the regidors and to the inhabitants explained: we were all questioned if there was any injury, and whether the said tract de los Tularcitos, could or could not be granted to the petitioner, to which myself, the regidors, and the inhabitants reply that it may be granted forthwith, for it is no injury,
47 and for validity, as I cannot sign my name, I make the form of the cross, at the pueblo de San José, September 11th, 1821.

Alcade AGUSTIN NARVAEZ.†
1st Regidor JUAN FERNANDEZ.†
2nd TOMAS ESPINOSA.

OCTOBER 4TH, 1842.

Let José Higuera be put in possession of the tract called de "Los Tularcitos," by the commissioner of San José, in whose jurisdiction it is situate; but before run the measurements and fix the monuments on the four sides, and advise this government of the distance designated to him in each, in order that when this proceeding be executed, I can issue the corresponding title of possession.

SOLA.

On the 23rd day of October, 1821, in obedience to the proceeding superior order from the Coronel Don Pablo Vicente de Sola, governor of the province, where he orders that the possession of the tract called de los Tularcitos be given to the invalid soldier, José Higuera, who petitioned for the same, I went
48 to the said tract, and in the presence of three witnesses, Mariano Duarte, Joaquin Buelna, and Florentino Archuleta, and whereas, he, the said petitioner, causes no injury, in virtue of the power upon me conferred, and in the name of our Sovereign Ferdinand 7th, whom God preserve, I gave possession of said tract to said invalid soldier, José Higuera, designating for him on the south, 600 varas; on the north, the same; on the west, 1400 varas, and on the east, 6,050 varas; which amply embraces the said tract de los Tularcitos.

And that it may in all time be valid I did sign with the witnesses, date aforesaid.

LEWIS PERALTA.

MARIANO DUARTE.
JOAQUIN BUELNA.
JOSÉ FLORENTINO ARCHULETA.

Filed in office April 1st, 1852.

GEO. FISHER, *Sec'y.*

(Here follows map page 49.)

1357

50 *Translation of expediente.*

MONTEREY, *Sept.* 23, 1837.

The possession asked for by Alviso will be suspended until the agreement of the one and the other of the parties.

(Signed) ALVARADO.

TO HIS EXCELLENCY THE SUPERIOR POLITICAL CHIEF: The citizen José Higuera, retired soldier of the company of cavalry of the presidio of San Francisco, and residents of the pueblo of San José de Guadalupe, before your excellency, with all due respect represent, that having obtained by decree of the 30th of April, 1821, the grant of the place named the Tularcitos, as also the possession as proved by the original documents, and wishing to obtain the approbation and ratification of the same lands, together with the augmentation as represented in the drawing or map annexed, which part I occupy with the consentment of the ayuntamiento of said pueblo of San José more for than twelve years, as I can prove.

But having been informed that unknowingly part of my land has been granted to José M'a Alviso, I beg your excellency to be pleased to take my request in consideration, and that said tract, such as represented in the map, may
51 be granted to me, holding the same by right of occupation, as mentioned before, since more than twelve years, with the consent of the aforesaid ayuntamiento, for which I beg your excellency you will consent to my petition, for which I will feel thankful.

(Signed) JOSÉ HIGUERA.

MONTEREY, *February* 14, 1839.

This government having been informed that the interested petitioner has settled with his neighbour, Jose Alviso, the difficulties which had occurred, and for reason of which the possession of the land asked for by Alviso was suspended by decree of 23 of Sept., 1837; and considering the long enjoyment and quiet occupation for so many years by José Higuera of the land he asks for, I have acceded to his former petition, granting him the ownership of the augmentation of land he asks for, which by virtue of the decree shall be considered as annexed to the former grant made by his excellency the governor, Da. Pablo Vicente de Sola.

Lieut. J. Juan B. Alvarado, governor of the Californias, order and sign.

Signed ALVARADO.

52 Filed in office May 21, 1853.

GEO. FISHER, *Sec'y.*

Exhibit No. 2., A. F., annexed to dep. of Juan B. Alvarado.

MONTEREY, 12 *de Nov're de* 1835.

SOR JOSÉ HIGUERA: Amigo y Sor Mio: Recibi su apreciable de 10 del corriente.

Y digo á V. en contestacion qe. deseanse V. en la just. y derecho qe. tiene al terreno en cuestion, la exmo diputacion pronto se reune y ella terminará prudentemente: es cuanto puedo decir á V. pa. ser satisfaccion.

Contando con un amigo qe. lo apreciá, y B. S. M.

JOSÉ CASTRO.

Filed in office Nov'r 11th, 1853.

GEO. FISHER, *Sec'y.*

53 *Translation of Exhibit No. 2.*

MONTEREY, 12*th of November*, 1835.

SOR JOSÉ HIGUERA: Dear Friend: I received your appreciable of the 10th of the present month. And in answer I tell you to trust in the justice and the

right you have to said land in dispute. The honorable deputation will soon assemble, and will then settle said question. This is all I can say to satisfy you, and to trust in the friend who esteem you.

(Signed) JOSÉ CASTRO.

Filed in office Nov'r 11, 1853.

GEO. FISHER, *Sec'y.*

Exhibit No. 3. A. F., annexed to dep. of J. B. Alvarado.

MONTEREY, *Sep're 23 de* 1837.

SR DN. JUAN ALVIREZ: MUY SOR MIO: de oficio le acompano los papeles de Alvisu y Higuera. Ya V. vera que yo deseo se corte amistosamente la cuestion de ambos.

Le encargo a V. mucho que haga empeño pr. ver como los pone en paz.

54 Unase U. con Salvio á ber si le ayuda a su fin y saludemelo V. mucho.

Espero que V me dara buena cuenta de este encargo.

Paselo bien y mande á su aff'ms.

JUAN B. ALVARADO.

P. D.

Pronto pienso suber.

Aqui han Llegado 150 fusiles en un buque y boy á comprarlos todos.

Filed in office Nov. 11th. 1853.

GEO. FISHER. *Sec'y.*

Translation of Exhibit No. 3.

MONTEREY, *Sept'ber 23rd.* 1837.

SIR DON JUAN ALVIREZ. Dear Sir: I herewith send you the papers of Alviso and Higuera. You will observe that I wish that said question be amicably settled.

I particularly charge you to use all possible means to arrange matters and put them in peace. Please counsel with Salvio, and see if he can help you in the matter, and salute him from my part.

55 I hope you may soon give me a favorable account of this affair left to your care.

Be happy and dispose of your friend.

(Signed) JUAN B. ALVARADO.

Filed in office Nov'r 11, 1853.

GEO. FISHER, *Sec'y.*

Exhibit No. 4. A. F., annexed to the dep. of J. B. Alvarado.

GOB'RS POLITICO DEL DEPARTAM'TO: Dn. José Ma. Alvisu y Dn. José Higuera hay dirijido a este gob'no varias instancias bervales haciendose uno á otro reclamaciones y entablando uno cuestion sobre la linea que dere dividir la posecion de los terrenos que actualmente ocupar, como el gob'no decea buscar por todos los medios posibles la paz de los vecinos sin dar lugar á que se entabler pleitos casi interminables y costosos he dispuesto buscar un medio de conciliacion pr. medio de il. con el fin de ver si se termina amistosamente la cuestion.

Al efecto acompaño á V. los espedientes que pertenecen a ambos litigantes para que se sirva V. disponer que las partes nombren seis hombres

56 buenos, y que V. como Juez imparcial los estimule a una transcio

amistosa. Del resultado de ella, me dará V. oportuno abiso bajo el concepto de que si no se abinieren las partes quedan con su derecho á salvo para presentarse p'r escrito al gob'no alegando sus derechos.

Dios y Libertad.

Monterey, Sep're 23 de 1837.

JUAN B. ALVARADO,

S'r alcalde constitucional de San José de Alvarado.

Filed in office Nov. 11th, 1853.

GEO. FISHER, *Sec'y.*

Translation of Exhibit No. 4.

Political Government of the Department:

Don José Ma. Alvisu and Dn. José Higuera have presented many verbal complaints against one or other to this government, regarding the boundaries or the line which has to divide the lands they now occupy.

The government desirous to maintain, by all the means in its power, the inhabitants in good understanding and peace, and to prevent indeterminable and expensive law suits, as come to the decision to try the reconciliation of the parties, and to settle, with your assistance, said question in a friendly manner.

57

To obtain the same, I herewith send you the disposition (expedientes) of both parties, that you may obtain of them to name arbiters, and that you, as an impartial judge, may stimulate them to come to a friendly understaning, and of which results you will give me a timely advise.

If the parties did not agree, they are allowed the privilege to petition the government and allege their right.

God and the republic!

JUAN B. ALVARADO.

Sñ alcade constitucional of San José de Alvarado.

Monterey, September 23, 1837.

Filed in office November 11, 1853.

GEO. FISHER, *Sec'y*

58 *Exhibit No. 5, A. F., annexed to dep. of Juan B. Alvarado.*

Digo yo José Tyera, que abiendo coubenido q'e quede el aroyito de lindero le queda la libertad á dicho José Maria Al Biso de poner sus corales de Boregas y Cabayada y ciembras de trigo y querta de arboles y unal casa.

A ruego del interesado lo firmo.

JOSÉ TYERA.

Abiendo coubenido las partes de José Maria al Biso y José Tyera lo firmo.

JUAN ALVIREZ.

Filed in office November 11, 1853.

GEORGE FISHER,
Secretary.

Translation of Exhibit No. 5.

I, José Igere, declare that, having been agreed that the small water run shall be the boundaries, said Jose Maria Alvisu allowed to put up its corrals for sheep and horses, to build a house, establish an orchard, and some wheat.

JOSÉ IGERE.

The parties interested, José Maria Alvisu and José Igere, having
59 agreed, I sign the present.
(Signed) JUAN ALVIREZ.

Filed in office Nov'r 11, 1853.

GEO. FISHER, *Sec'y.*

Opinion of Comm'r Alpheus Felch.

ANTONIA HIGUERA *et al.* *vs.* THE UNITED STATES. } 148.—For the place called Tularcitos, in Santa Clara county.

The claimants are alleged and proved to be the children and heirs-at-law of José Higuera, deceased, from whom they claim to derive title to the premises by inheritance.

From original documents, duly proved in the case, it appears that said José Higuera applied to Governor Sola for a grant of the premises called Los Tularcitos; that, under the order of the governor, reports were made by several public functionaries in reference to the propriety of making the grant; that, under
60 date of October 4, 1821, a decree was entered directing that said Higuera be put in possession of the land, and the measurement be made and the monuments fixed and reported, so that the title might be issued, and the proceedings close with the certificate of the proper officer that he has put the party in interest in possession of the land, giving the length of the four sides of the premises.

In 1837 Higuera applied to Governor Alvarado, stating that he had obtained a grant from Sola, and had been put in possession of the lands as appeared by the documents above mentioned, which were therewith presented, and solicited the approbation and ratification of the same lands, together with an augmentation thereof, as represented in the map, which he annexed and which he had occupied more than twelve years. The petition alleges the existence of a difficulty between the petitioner and one José Maria Alvisu, and the governor ordered the proceedings to be stayed until the parties should come to terms on the subject. This difficulty having been settled before the alcade, on the
61 14th February, 1839, the governor made a decree of concession in favor of the petitioner. All the papers were delivered to the party in interest, and are now produced in evidence of his right to the land.

The premises assigned to the grantee under the decree of Governor Sola are not very clearly defined; but the application made by Governor Alvarado, in 1837, was intended to embrace the entire premises, including both the land covered by Sola's decree and the augmentation which was solicited. And on examination, we are satisfied that the decree of Alvarado must be construed to be a recognition of the right of the grantee previously existing in the premises claimed under Sola's grant, as well as a grant of the augmentation solicited.

Both are embraced in one description and delineated on the same map which was presented with the petition to Alvarado, and now constitutes a part of the espediente, without giving any description to distinguish the portion of the premises claimed under Sola's decree from that which was solicited as an
62 addition. But, as we think the grant of Alvarado sufficient to lay the foundation of an equitable title, in connexion with the previous concession to the grantee, we need inquire only whether the description of the entire premises contained therein is, in connexion with the testimony given on the subject, sufficient to identify and segregate the land.

The proof shows that Higuera went into possession of the premises soon after the concession was made by Sola in 1821, built a house, and lived upon and cultivated the place, and that such occupation by the grantee and his family has been continued ever since.

Long before his application to Governor Alvarado he built houses in the portion of land claimed as an extension, and occupied the entire tract now claimed.

His petition to Alvarado shows that he had thus enlarged the borders of the land occupied by him, and asserts that he did so with the approbation of the ayuntamiento of San José.

63 The land to which title was solicted of Alvarado, as designated in Higuera's petition, involved two elements of description. First, it was the land then occupied by the petitioner, and which he had occupied more than twelve years; and, secondly, it was that represented on the annexed map. This map is proved, by the testimony of José Castro and Juan B. Alvarado, to be a correct delineation of the premises, and lines are drawn on the east and west sides, evidently designed to represent the lines of the premises, but on the north and south, while some natural objects are named, there are no lines to show precisely how far the land extended. The testimony of said Castro and Carmen Sibrian de Bernal, describes the lines of the rancho, as claimed and occupied by said Higuera. These are described as the boundaries as they were known as early as 1824, and as they continue to be known.

They correspond with the delineation on the map so far as the same are there represented, and I think are sufficiently clear and definite to show what

64 the land was which the party solicited, and to which Governor Alvarado intended to give him title.

With the description there given, there would seem to be no difficulty in surveying the land, and as, under the proofs, the equities of the original grantee are established, a decree will be entered in favor of the petitioners, his children and heirs-at-law Confirmed.

Filed in the office Nov'r 28, 1854.

GEO. FISHER, *Sec'y*

Decree of confirmation.

ANTONIO HIGUERA *et. al.* *vs.* THE UNITED STATES. } 148.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioners is valid, and it is therefore decreed that the same be confirmed.

The land of which confirmation is hereby made, is situated in Santa Clara county, and is the same land formerly occupied by José Higuera, now

65 deceased, and is known by the name of Los Tularcitos, and is bounded and described as follows, to wit: Beginning at the back side of the principal house on said rancho, standing at the foot of the hill, and running thence northwardly to a lone tree on the top of the sierra, (which tree is known as a landmark;) thence east along the sierra to the line of the land known as the rancho of José Maria Alvisu; thence southerly along the west line of said Alvisu's rancho till it intersects the Arroyo de la Penitencia; thence up said arroyo to an estuary, (estero,) and from this point to the place of beginning, the said line between the premises hereby confirmed, and Alvisu's rancho to be the line as the same was settled, agreed upon, and adjusted between said Higuera and said Alvisu before the alcalde Juan Alvisu, reference to be had for more particular description to the espediente, and the map constituting a part of the same, which are on file in this case.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL, *Comm'rs.*

Filed in office Nov'r 28, 1854.

GEO. FISHER, *Sec'y.*

66 And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered, that two transcripts of the the proceedings and of the decisions in this case and of the papers and evidences upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern district of California, and the other to be transmitted to the Attorney General of the United States.

Secretary's certificate.

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify
67 the foregoing fifty-nine pages numbered from one to fifty-nine, both inclusive, to contain a true, correct and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses, upon which the same is founded, on file in this office, in case No. 148, on the docket of the said board, wherein the heirs of José Higuera are the claimants against the United States for the place known by the name of "Los Tularcitos."

[SEAL.] In testimony whereof, I have hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this twentieth day of June, A. D. 1855, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Sec'y.*

Endorsed: Filed June 29, 1855.

JOHN A. MONROE, *Clerk.*

68

Notice of appeal.

69 OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, June 29, 1855.

148.—"Los Tularcitos." Heirs of José Higuera, claimants:

You will please take notice that in the above case decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings, in which was received in this office on the 14th day of June, 1855, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING, *Attorney General.*

Endorsed: Filed Sept. 6, 1855.

JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

70 CALIFORNIA LAND CLAIMS,
Attorney General's Office, Nov'r 4, 1856.

SIR: In the case of the claim of the heirs of José Higuera confirmed to the claimants by the commissioners, case No. one hundred and forty-eight, (148,) appeal will not be prosecuted by the United States.

I am, respectfully,

C. CUSHING.

WM. BLANDING, ESQ.,
U. S. Attorney, San Francisco.

Stipulation.

In the district court of the United States, northern district of California.

THE UNITED STATES
vs.
THE HEIRS OF JOSÉ HIGUERA. } Case No. 228.—Transcript No. 148.

In pursuance of a notice from the Attorney General of the United States, hereunto annexed, it is hereby stipulated and agreed that the appeal heretofore taken in this case from the decision of the United States land commis-
71 sion to ascertain and settle private land claims in California, be dismissed, and the notice of intention to prosecute said appeal filed in this court by the Attorney General of the United States be withdrawn, and that the claimant have leave to proceed under the decree of the said land commission in his favor as under *final decree.*

Dec. 12, 1856.

THORNTON, WILLIAMS & THORNTON
Atty's for Claimants.
WM. BLANDING,
U. S. Dist. Att'y.

Endorsed: Dec. 12, 1856.

W. H. CHEVERS,
Deputy Clerk.

Order.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Friday, the 12th day of December, in the year of our Lord one thousand eight hundred and fifty-six.

Present: The Honorable Ogden Hoffman, district judge.

72 THE UNITED STATES
vs.
HEIRS OF JOSÉ HIGUERA, } Case No. 228.—Transcript No. 148.

The Attorney General of the United States having given notice that no appeal will be further prosecuted in this case, and a stipulation having been entered into by the United States district attorney for the dismissal of the appeal from the decision of the board of United States land commission heretofore rendered in his favor, on motion of the district attorney, it is ordered, adjudged, and decreed, that the appeal pending in this court be dismissed, and that the claimants have leave to proceed under the decree of the land commission heretofore rendered in their favor as a *final decree.*

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed December 12, 1856.

JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

Order to return survey.

73 In the U. S. district court, northern district of California.

THE UNITED STATES
vs.
THE HEIRS OF JOSÉ HIGUERA, dec'd. } Los Tularcitos.

On the motion of the appellees, by their counsel, it is ordered that J. W. Mandeville, United States surveyor general for the State of California, be, and is hereby directed, and required to return to this court the plat of the survey of the lands claimed in the above-entitled cause, as made and approved by him under the decree of this court of the 12th day of December, 1856.

Endorsed: Filed June 7th, 1859.

W. H. CHEVERS, *Clerk.*

74 [Here follows map.]

75 *Statement of U. S. Sur. Gen'l to accompany return of survey.*

U. STATES
vs.
HEIRS OF J. HIGUERA. } D. C. 228.—L. C. 148.

The plat of the rancho Los Tularcitos confirmed to the heirs of J. Higuera is in compliance with the order of the district court herewith returned.

It is proper to state that a personal examination of this location was had by me on the ground, in connexion with the papers on file in the archives and the decree of court, and I came to the conclusion that the present location was correct; but to give all parties justice, I referred the whole matter to the department with a report of my action in the matter, accompanied by exhibits from the archives.

Under date of August 1st, 1859, I am informed by the comm'r gen'l of the land office, that "in the case of the survey for 'Los Tularcitos,' the Secretary of the Interior, under date of 30th July, 1859, affirmed the decision of this office approving the survey of said claim recommended in your report of 30th June, 1858, and shown by 'map A,' accompanying the same."

76 The copy of the plat now returned to the district court is the same as that approved by the Secretary of the Interior, as above stated.

Very resp'y,

J. W. MANDEVILLE.
U. S. Sur. Gen'l, Cal.

Hon. OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed Oct. 20, 1859.

W. H. CHEVERS, *Clerk.*

Order allowing claim'ts 20 days to except to survey, &c.

In the United States district court for the northern district of California.

UNITED STATES
vs.
THE HEIRS OF JOSÉ HIGUERA. } No. 228.

On motion of the claimant's attorney, with the consent of the U. S. district attorney, it is ordered that the claimant be allowed twenty days to file his exceptions to the survey, aproved and returned to this court in the above-entitled cause, and that after the filing of said exception either party may proceed to take testimony in relation to said survey upon giving five days' notice to the opposite party.

77 Endorsed: Filed Oct. 24, 1859.

W. H. CHEVERS, *Clerk.*

Claimant's objections to survey.

In the district court of the United States for the northern district of California.

THE UNITED STATES
vs.
THE HEIRS OF JOSÉ HIGUERA.

And now comes the said claimants, by their attorneys, Thompson, Irving & Pate, and except to the survey of the land claimed in this case, known as the rancho of "Los Tularcitos," a plat of which survey, as approved by the United States surveyor general, was filed in the clerk's office of the said court on the 20th day of October, 1859.

And for objection to the confirmation and approval of said survey, the said claimants, by their attorneys, aver, as follows:

First. That the said survey was not made in accordance with the decree of confirmation, the opinion of the board of the United States land commissioners, upon which the same was founded, as finally confirmed by this court,
78 nor with the evidence referred to in said decree and opinion filed among the papers in the case.

Second. That according to said confirmation, decree, and the evidence in the case, the northern and southerly lines of said survey should be extended eastwardly to the sierra, or main range of mountains, so as to include the track of country known as the "Calaveras," or valley of Calaveras, or that portion of said valley lying between the said northern and southerly lines, making the said sierra the eastern boundary instead of the range of hills lying between the Tularcitos and Calaveras valleys, as adopted by the U. S. surveyor general, and laid down on said plat.

Third. That according to said decree and evidence, that portion of the northern line of said survey extending from the slaugh or "estero" to the Calera creek should be a strait line from said estero or slaugh to said creek, or to the point of beginning, instead of making the angle at the figure 2 near the termination of the line marked "rail fence," as represented on said plat.

Fourth. That the eastern line of said survey along the sierra, as
79 claimed by said claimants, should be extended northerly until a line drawn due west will strike the nearest point of the Las Caches creek to the said eastern line; and the said southern line should then be continued along the said Las Caches creek to its termination, and thence to the Penitencia, as represented on said plat.

THOMPSON, IRVING & PATE,
Attorneys for Claimants.

Endorsed: Filed Nov. 22, 1859.

W. H. CHEVERS, *Clerk.*

Stipulation admitting certain testimony taken before U. S. Surveyor General.

U. S. district court.

THE UNITED STATES
vs.
HEIRS JOSÉ HIGUERA.
No. 228.—"Los Tularcitos."

SAN FRANCISCO, *Nov.* 18, 1859.

It is hereby stipulated and agreed, by and between the acting U. S. attorney and the attorneys for the claimants, that certified copies of testimony taken before the U. S. surveyor general for Cala. may be filed in this court and read in

evidence at the hearing of the case with like effect as if the same had
80 been regularly taken by order of the court, subject to all objections except those provided for by this stipulation.

TULLY R. WISE.
Acting U. S. Dist. Att'y.
THOMPSON, IRVING & PATE.
Att'ys for Claimants.

It is furthermore stipulated, that the deposition of Nasario Galindo, being one of those referred to in the foregoing stipulation, and the conclusion of which appears to have been lost, may be read in evidence, under the said stipulation, as far as it goes, with the like effect as if it appeared to have been regularly completed and signed. Feb. 27, 1860.

TULLY R. WISE,
Acting U. S. Dist. Att'y.
THOMPSON, IRVING & PATE.
Att'ys for Claimants.

Endorsed: Filed Nov. 23, 1859.

W. H. CHEVERS, *Clerk.*

81 *Certified copy dep. before U. S. surveyor gen'l, filed by U. S. under stipulation.*

In the matter of Rancho Los Tularcitos.

Testimony taken before U. S. Surveyor General, June 29, 1858.

And'w H. Broder, sworn: resides in Alameda county, San Leandro.

1 question. How long have you resided there?

Answer. Since 1847.

2d question. Are you acquainted with Aguton Ruiz—how long?

Ans. I am, since the fall of 1848.

3d question. What has been the character of your business in Alameda county?

Ans. I have been farming there; and also was sheriff from April, 1853, to last fall.

4th question. Are you acquainted with the general character of Aguton Ruiz for truth and veracity, and what is that character?

Ans. I am; and for a Spaniard it is considered good, as far as I know.

5th question. From his general character, would you believe him on oath?

Ans. Yes.

82 6th question. Where did you know him?

Answer. I knew him in the mission San José and the Higuera ranch.

A. H. BRODER.

Henry C. Smith, sworn: lives at Alvarado, Alameda county; have lived there 12 years.

1st question. Do you know Aguton Ruiz; and what is his general character for truth and veracity, and what is it?

Answer. Yes; I have known him about ten years. I am acquainted with his general character for truth and veracity; it is good.

2d question. Is your acquaintance general or casual, and would you believe him on oath?

Ans. I am well acquainted with him. I have had transactions with him to the amount of $10,000. I would believe him on oath as quick as any Spaniard in the State.

3d question. Do you know Pedro Cheboya; what countryman is he?

Ans. I think he is a native Californian, what I call a Spaniard.

83 4th question. Can you describe where Aguton Ruiz lives?

Answer. About ¾ to a mile from the house formerly occupied by Mariano Guera, to the right of the road from the Tularcitos to the Calaveras valley; he lives S.E. of the southeast of the sausal, some two miles S. of west of the Calaveras valley.

Cross-examined.

Did you give your deposition in this case before P. K. Woodside, n. public, on the same day that A. Ruiz gave his?

Answer. I did.

2d question. When you speak of A. Ruiz as living ½ mile E. of the sausal, do you mean the same sausal that you had reference to and described in that deposition?

Answer. I do.

H. C. SMITH.

Testimony of H. C. Smith and Aguton Ruiz in relation to the location of the rancho "Los Tularcitos," situated in the county of Santa Clara, State of California, taken before Preston K. Woodside, a notary public, in and for the
84 city and county of San Francisco, on the 12th day of June, A. D. 1858.

Testimony in relation to the location of the rancho Los Tularcitos, situate in the county of Santa Clara, State of California, taken before Preston K. Woodside, a notary public, at the city and county of San Francisco, State of California, in presence of R. A. Thompson, att'y for claimants, and E. W. F. Sloan, att'y in behalf of the U. S.

Henry C. Smith, being first duly sworn, doth depose and say:

Ques. What is your name, age, and residence?

Ans. My name is Henry C. Smith. I reside in Alvarado, Alameda county, in this State. I am 34 years of age. I have resided in this State since 1845, most of the time in Alameda and Santa Clara counties. I went there in 1846.

Ques. Do you know the rancho called the Tularcitos, in the neighborhood of the mission of San José. If yea, how long have you known said rancho?

Ans. Yes, I do know said rancho. I know when Valentine and Mariano Higuera lived in 1846, but did not know the ranch by the name of Tu-
85 larcitos at that time. In 1848 I knew it by the name of "Los Tularcitos."

Ques. On what part of the ranch did they live at the time you first knew the same?

Ans. Valentine Higuera lived then where he now lives at the foot of the hills, (witness is here shown exhibit marked A, referred to in deposition of José Antonia Alviso,) and says that in 1846 Valentine Higuera lived in the house laid down on the map and marked "3," and afterwards moved to house No. 2, (the numbers on the map 1, 2, 3, 4, 5, were made by the notary for the purpose of identification.) Valentine Higuera moved to the house marked 2 about 4 years ago, more or less, I do not recollect. He resides there now.

Ques. Are you familiar with that part of the ranch which lies to the east of the houses you have just mentioned?

Answer. I am.

Ques. Do you know a particular spot called the "Tularcitos," lying among the hills, and marked on this map last shown you?

86 Ans. (Witness takes the map and says) I do.

Ques. Describe the location with reference to the houses first mentioned, its distance and direction?

Ans. The distance is about one mile and a half or two miles, or may be less than a mile and a half, in a direction south of east, and I think it occupies very much the relative position as represented on this map.

Ques. Where did Mariano Higuera reside at the time you first knew the land?

Ans. He resided at a place called Tularcitos—a little lake with tules growing out of it—at the place I have just described in answer to the last question.

Question. Look on the map just shown you at the place marked "chemisal," and the figure of a tree, at another place marked "posa," and a third marked "sausal," and say whether you are acquainted with these places on the land itself?

Ans. I see the marks here. I am acquainted with the places on the land corresponding with these places shown me on the map. The places are so known by the inhabitants.

87 Ques. Describe each of these places successively; describe their position and location on the ranch.

Ans. The chemisal tree, as marked on the map, is situated upon a mountain in a northerly direction, or east or west of north—I cannot say—from the house formerly occupied by Mariano Higuero, in the Tularcitos. It is situated on the top of the ridge, in a northerly direction, about a mile from the Tularcitos lake. The posa on the Tularcitos ranch is distant from the Tularcitos lake about 500 or 600 yards, and a less distance from the house formerly occupied by Mariano Higuera. The place called Sausal is still south or west of south from the posas; there may be several small "sausals." There is a clump of trees that is called the Sausal by the people that live there; this is situated south or west of south from the posa.

Ques. Is the tree just described by you visible at any considerable distance from the west?

88 Ans. It is. It can be seen as far in any direction from the valley, in travelling from San José to Oakland on the thoroughfare, from the time you leave San José until you get up near the Warm Springs. It is also visible from any point in the Tularcitos valley. It is visible from the house marked No. 2 or 3, marked on the map.

Ques. Is there a valley running in a northerly and southerly direction, embracing the Posa and Sausal? If so, describe it and the country east of it.

Ans. There is such a valley. From north to south it is about a mile long. It is the same valley in which the Tularcitos is situated. The valley is surrounded by hills and mountains; on the west they are low; on the east they are a high range. This is the same range on which the chemisal tree is situated upon, and divides the Tularcitos from the Calaveras line.

Ques. Describe, if you please, the country lying east of that mountain ridge that divides Tularcitos from the Calaveras valley.

89 Ans. The mountain slopes and runs down eastward into Calaveras valley. Calaveras valley, I should think, was 2½ or 3 miles long, and from a half or three-quarters of a mile in breadth. It widens in the middle and narrows at both ends. On the east side of Calaveras valley lies a high range of mountains and hills, oats growing on many of them—some of them bluff ravines running down into the valley.

Ques. Is that valley you have just spoken of as Calaveras valley designated any where on the map just shown you? If so, point it out.

Ans. I see the word Calaveras marked here; but, taking the location of the chemisal tree, the sausal, and the posa, the Calaveras valley is not laid down in the map. It should be east of the border of the map, according to the location of the chemisal tree, the sausal, and the posa.

Ques. State, if you can, what is the distance from the particular spot where the old house in the Tularcito is located to the mountain that borders the eastern side of Calaveras valley, as it is on the ground.

Ans. By the road I should think it was about between three and four
90 miles; a straight course over the hills it would probably be less.

Ques. Are there any places in the Calaveras valley corresponding to the tree objects mentioned on the eastern side of the map just shown you, and called chemisal—with the figure of a tree—posa, and sausal?

Ans. There are not. There is in Calaveras valley some sausal and some springs that would be called posas, but they are in the north end of the valley. There is nothing in the valley that would be called a chemisal.

Ques. Do you know the boundaries of the Tularcitos rancho? If so, describe them.

Ans. I cannot say that I do. I have been to the chemisal tree frequently, a long time ago, and to another corner; but as to the boundaries I cannot say.

Ques. Are there any marks apparent on the chemisal tree? If so, describe them.

Ans. There are. When I first saw the tree there was a large wooden cross in the top of the tree considerably decayed; also, a cross cut in the
91 body of the tree, and also the figures 1838. The figures and the cross are now pretty much grown over. There is a pile of stones at the foot of the tree. The large wooden cross points pretty near north and south—east of north and west of south. Along the range of mountains from the chemisal tree in a southeasterly direction, about one mile and a half, (it may be more or less,) is, or was at the time I saw it last, a large stake square; it had been round stick, hewed on four sides, marked with letters and figures that I do not remember. The stake was on the western slope of the range, about three-quarters of a mile from the house occupied by Mariano Higuera, in a southeasterly direction, and within about a half a mile from the "Arroyo de los Coches." I do not know of any three marked trees on the east side of the Calaveras valley or anywhere else.

Ques. Is there any tree on the mountain which bounds the eastern side of the Calaveras valley corresponding with the tree designated on the map as the chemisal tree?

Ans. There is not. There is no chemisal within eight or ten miles of the eastern side of Calaveras valley that I know of; there is no tree corresponding with the tree marked "chemisal" on the map just shown me.

92 *Cross-examined.*

Ques. Are the places which you have described in your examination in-chief as known by the names of Posa and Sausal situated in the valley of Tularcitos or in the valley of Calaveras?

Ans. They are in the valley of Tularcitos.

Ques. Look upon the map already referred to and state whether there is not a range of hills laid down thereon as lying between a place marked "Tularcitos" and the place marked "Calaveras."

Ans. There is.

Ques. Do you know that the tree or stake of which you spoke in your examination-in-chief were boundaries of the Tularcitos ranch?

Ans. I do not know further than what I have heard and the general talk of the people that lived there. I do not know certain that they are boundaries—only what I have heretofore heard.

Ques. How far is the stake of which you spoke south of the Tularcitos?
93 Ans. About three-fourths of a mile east of south; it is nearer east than it is south. It is about a half mile from the Arroyo de los Coches. It is near east from the south end of Tularcitos; it is south of east from the house.

Ques. Would not a line drawn from the south end of Calaveras valley to intersect Coches creek in a westerly direction, pass near that stake?

Ans. It would strike the Coches south of the stake, I think; I cannot say positively.

Ques. Do you know from general repute or otherwise that the tree of which you have just spoken as being marked with a cross has long been known as one of the boundaries of the pueblo of San José?

Ans. I do not. I never heard of its being such boundary; I never heard of it before.

Ques. Is there not chemisal and trees growing on the hills north and northeast of Calaveras valley?

Ans. There are trees but no chemisal, that I know of, within several miles. There are oak trees and other kinds growing in the gulches and along,
94 but no chemisal.

Ques. Have you any interest in the location of this ranch or within the boundaries claimed by the parties claimants, either direct or indirect?

Ans. I have none whatever.

Direct resumed.

Ques. Do the hills marked upon the map as lying between the place marked "Tularcitos" and the place marked "Posa," correspond with the range of mountains lying between Tularcitos and Calaveras valleys as heretofore described by you, or do they represent undulated surfaces between different places in the same valley?

Ans. I cannot say what these marks on the map represent, but I should think they represent more the rolling ground between the Posa and the Tularcitos than they do the range of hills between the Tularcitos and the Calaveras valley.

Re-cross.

Ques. You have stated that the Posa of which you have spoken was
95 situated in the Tularcitos valley; is there any range of hills between the Tularcitos and the Posa?

Ans. No, sir; nothing more than rolling ground. There are several posas in the south end of Tularcitos valley.

(Signed) H. C. SMITH.

Robert Simson was here duly sworn to act as interpreter between the witness whose name follows, the counsel present, and the notary, and thereupon Aguton Ruiz was duly sworn as a witness.

Ques. What is your name, age, and place of residence?

Ans. My name is Agutin Ruiz; I am fifty-one years of age; I reside at Los Angeles and Santa Barbara, and at present I reside in the county of Santa Clara, on my little ranch near Los Coches.

Ques. How long have you resided at your present place of residence at your little rancho?

Ans. Going on two years.

96 Ques. How long have you been acquainted with the Tularcitos rancho?

Ans. Since the year 1831, when I entered there as mayor domo of the Rancho de los Tularcitos.

Ques. Under whose employment were you at that time?

Ans. In the employ of the deceased José Higuera, my uncle.

Ques. How long did you remain there in that capacity or otherwise on the rancho?

Ans. Until the year 1842, when I went thence to Los Angeles.

Ques. Do you know the boundaries of the Tularcitos rancho?

Ans. I do.

Ques. Describe them.

Ans. The first line is from the orchard or huerta to the chemisal prieto; the second line is from the chemisal prieto to the Tularcitos; the third is from the Tularcitos to the "Penitencia;" the fourth is from the Penitencia
97 to the Esteritos, from the Esteritos to the place of beginning.

Ques. Look at the map now shown you, (the same being the same map shown witness H. C. Smith,) and from the various objects designated thereon, can you point out the boundaries of the ranch?

Ans. Yes, I can; the lines which I have already described in my testimony are the lines of my uncle José. The Tularcitos was towards the Monte de los Coches.

Ques. Do you know a tree standing on the ground and surrounded by chemisal, corresponding with the position of the figure of the tree represented on the map, near the northeastern corner?

Ans. I know the tree; my uncle showed it to me when he showed me the boundaries of the rancho; it has got some numbers marked upon it. I do not recollect what the numbers are, so much time has elapsed since I saw them.

Ques. Describe the position of this tree further in reference to the nature of the ground where it grows?

98 Ans. It is up in the mountain—mountain chain.

Ques. In what direction does the eastern line of the rancho run with reference to this tree?

Ans. It runs by the summit and descends to the aquita near the road, and from thence to the Monte of Los Coches. From this tree, at the chemisal prieto, the summit or divide runs along southeasterly until it reaches a road which goes to the Calaveras. In the year when my uncle took me there, there was a large iron driven a little to one side of the road, where there is a little spring of water, where there is now a squatter; the line followed the road from the spring where the iron was driven down to the Arroyo de los Coches.

Ques. Is the divide or ridge of which you have spoken as on which runs the line as you have described, the same ridge whereon is situated the three just described by you?

Ans. Yes, the same.

Ques. Do you know where the Calaveras valley is situated?

99 Ans. Yes, sir.

Ques. On which side of the divide or summit which forms the boundary line, as you have stated, is Calaveras valley situated?

Ans. It is on the side towards the rising sun—on the east side.

Ques. Did your uncle José Higuera, to your knowledge, ever claim any other as his eastern boundary line than the line just described by you as such?

Ans. No, sir. In the first place, my uncle's rancho extended from the house to the chemisal prieto, and he afterwards got an augmentation towards the Penitencia. His ranch of my uncle José's has been constantly known as San Ignacio.

Cross-examined.

Ques. Who owns the little ranch where you live?

Ans. I am.

Ques. Have you a grant from the Mexican government for that ranch?

100 Ans. No, sir. I have now taken up the land as a squatter.

Ques. Who claims to own this land?

Ans. Myself; I do not know of any other person that claims this land.

Ques. Is the land that you occupy embraced within the boundaries of the Tularcitos ranch, as claimed by the chemisal of José Higuera?

Ans. It is not included in the boundary lines of my deceased uncle José.

Ques. How far is your ranchito situated from the valley of Calaveras?

Ans. It will not vary much from 1,800 yards—I have not measured it—I think thus.

Ques. How far is your rancho from the Arroyo de la Monte de los Coches?

Ans. Close by it.

Ques. Is your rancho between the Arroyo de los Coches and the Calaveras?

Ans. Yes, but it is apart to one side.

101 Ques. Do not the Higueras claim the land whereon your ranch is situated?

(Att'y for U. S. objects.)

Ans. They never have it reclaimed it of me.

Ques. During the time that you were mayor domo for Jose Higuera who occupied the Calaveras valley?

Ans. The cattle of my uncle used to run there at that time, but the people of the pueblo complained to the alcalde. One of the regidores came to send the cattle off, and my uncle told him that when the people came that wanted to put their cattle there, that they could drive his cattle off, but that he could not keep them off.

Ques. In what year was that?

Ans. I cannot say—it was while I was mayo domo.

Ques. Did not your uncle have a corral there in Calaveras valley?

Ans. Whilst I was there there was no corral. I done the killing and all the work; there was no corral there then. Afterwards, when I went to Los Angeles, there was then a corral there.

102 Ques. Was there, held any rodeos by your uncle in the Calaveras valley, when you were mayo domo?

Ans. They collected the cattle together in rodeos in that valley, and then brought them down to the corral near the houses.

(Signed) AGUTON RUIZ

STATE OF CALIFORNIA,
City and county of San Francisco, ss:

I, Preston K. Woodside, a notary public in and for said city and county, do hereby certify that the annexed and foregoing deposition of Henry C. Smith and Aguton Ruiz were taken before me at the city and county aforesaid, on the 12th day of June, A. D. 1858, in presence of R. A. Thompson, esq., att'y for claimants and E. W. F. Sloan, att'y in behalf of the United States; that each of said witnesses named were by me first duly sworn, and being so sworn, did testify as in their several depositions set forth, which testimony was by me carefully reduced to writing; and the examination of the witnesses being severally closed, their several depositions were by me carefully and distinctly
103 read aloud in the presence and hearing of the witnesses, who having severally first fully corrected the same as they desired, they were thereupon severally subscribed by the said witnesses in my presence.

[SEAL.] In witness whereof, I have hereunto set my hand and affixed my official seal, this 12th day of June, A. D. 1858.

P. K. WOODSIDE,
Notary Public.

I, J. W. Mandeville, surveyor general of the United States for the State of California, do hereby certify that the foregoing is a full, true and correct copy of their respective originals, now remaining on file in my office.

[SEAL.] In testimony whereof, I have hereunto subscribed my name and affixed the seal of my office, at the city San Francisco, California, this 14th day of November, A. D. 1859.

J. W. MANDEVILLE,
U. S. Surveyor General, Cal'a.

104 Endorsed: Filed Nov. 23, 1859.

W. H. CHEVERS, *Clerk.*

Testimony in relation to the location of the rancho of Los Tularcitos, confirmed to José Higuera et al. Taken before the U. S. Surveyor General.

José Antonio Alviso, being sworn on the part of the claimants, deposes and says: That he is 68 or 69 years of age, and that he resides in the county of Santa Clara; that he has resided in said county 28 or 29 years; he says he does not remember where he lived in the year 1821, does not particularly remember dates.

1st ques. Do you know the rancho called Los Tularcitos, claimed by Antonio Higuera *et al.*

Ans. I do know said rancho.

2d ques. Do you know anything of juridical possession having been given of said rancho at any time?

105 Ans. I know of juridical possession having been given in the time of Commissioner Luis Peralta.

3d ques. By what officer was the juridical possession given?

Ans. Mariano Duarte was one of the assistants who gave the possession, and Luis Peralta was the judge who give the possession.

4th ques. Was you present when said possession was given.

Ans. I was present as a spectator; did not assist in the measurement

5th ques. Are Luis Peralta and Mariano Duarte living or dead?

Ans. They are dead.

6th ques. Did you know Joaquin Buelna, and was he present?

Ans. I knew him and he was present; he is dead.

7th ques. At what point was the juridical measurement commenced?

Ans. It was commenced at an oak, in the Tularcitos.

106 8th ques. Is that oak still standing?

Ans. It is still standing.

9th ques. Look at the map now shown you and hereto annexed as exhibit "A" to this deposition, and state whether you know the (viña) represented on said map as situated on the Tularcitos?

Ans. I know the viña situated in the northwest corner of the Tularcitos.

10th ques. Are there any remains of the viña existing now?

Ans. There are some holes where the viñas have been, and perhaps some of the old vines.

11th ques. In what direction and what distance is the tree at which the measurement was commenced from this vineyard?

Ans. The tree lies to the south of the "viña," at the distance of from 4 to 5 hundred varas, I cannot say practically.

12th ques. In what manner did the judge established the boundaries?

Ans. By the measurements.

107 13th ques. What boundaries were pointed out by the judge?

Ans. The boundaries on the north was the Arroyo de la Calera; on the part of the south the boundaries was the Arroyo del Muerto de los Coches; on the part of the east the Sierra Nevada or Sierra Madre.

14th ques. What lines were measured and in what direction?

Ans. They commenced at the oak tree, measuring through the Calaveras to the foot hills at the Sierra.

15th ques. Was the plain or valley at the Calaveras included within the juridical measurement as given by one Luis Peralta at that time?

(Question objected to by the opposing counsel as leading.)

Ans. It was included.

16th ques. What is the distance from the oak tree in the Tularcitos to the foot hills of the Sierra, beyond the Calaveras?

Ans. I cannot say.

108 17th ques. Who was governor of California at the time of the giving the possession?

Ans. Don Pablo Vicente Soto.

18th ques. Was the valley of Las Calaveras occupied by cattle, or in any other manner, at that time?

Ans. It was occupied by José Higuera; he placed his cattle on it and built a corral immediatly after he obtained the grant.

19th ques. Who occupied it from that time until the Americans took possession of the country?

Ans. It was occupied by José Higuera, the grantee, until his death, and after his death it was occupied by his son Mariano, who had a house on the same and occupied it.

20th ques. Did Don Mariano go there to live before the Americans came to the country?

Ans. He did not; he had a house there and men in his employ, and had cattle on the same.

21st ques. Do you know when José Higuera died?

Ans. I do not.

109 *Cross-examined by opposing counsel.*

1st ques. Where is the house situated which you say was occupied by Mariano?

Ans. One was situated in Las Calaveras and one in Los Tularcitos.

2d ques. Were both of these houses built by Mariano, or was one built by José, his father?

Ans. They both built by Mariano. The one in the Tularcitos in the lifetime of his father, and the one in the Calaveras after his death.

3d ques. How near the old vineyard described by you was the house at the Tularcitos situated?

Ans. About 500 varas, a little more or less; it is towards the south from the vineyard.

4th ques. Did José Higuera ever occupy the house in the Tularcitos?

Ans. He occupied it some little while, and afterwards gave it to his son.

5th ques. Is there a little valley east of the vineyard in the Tularcitos in which there several willow groves?

110 Ans. There is a place where there are a few willows, but there is no valley or plain.

6th ques. Do you not remember a place near those willows called Las Calaveras, distant from the other place called Calaveras?

Ans. I know of no other but the plain of Las Calaveras.

7th ques. In going towards the east from the Tularcitos, do you call the first valley you come to the Calaveras?

Ans. I do.

8th ques. In going from the Tularcitos to the Calaveras, do you cross a sierra or low hills only?

Ans. Low hills only, (lomitas muertas.)

9th ques. Describe as nearly as you can the distance from the old vineyard in the Tularcitos to the top of the sierra?

Ans. There may be two leagues or a little more

10th ques. What distance is it from the old vineyard to the waters of
111 the bay on the west?

Ans. I cannot say—I have no idea of the distance.

11th ques. At the time at which juridical possession was given, was that possession extended on the west as far as the waters of the bay?

Ans. I only saw the possession given of the upper part of the Tularcitos.

12th ques. Did you ever attend any rodeos on the Tularcitos rancho?

Ans. I have attended many.

13th ques. In what part of the rancho was the rodeos held?

Ans. In the first place they were held in the Calaveras, afterwards in the Tularcitos.

14th ques. Was the place in the Calaveras where the rodeos were first held more than two miles from the old vineyard?

Ans. I cannot say whether it may be a league, a half a league, or a quarter—I dont know.

112 15th ques. Where on the rodeo ground of the Calaveras could you see the house of Higuera in the Tularcitos?

Ans. I could not, there were hills between them.

16th ques. Were the Indians not troublesome at that time in the Calaveras plains?

Ans. They were bad in all parts, not worse there than in other places.

17th ques. In that time were the Indians so troublesome in the plains of the Calaveras that no ranchero would venture to graze his cattle there?

Ans. They were not, cattle were grazed on the Calaveras plains.

18th ques. Did you go with the judge who gave possession, from the oak tree across the Calaveras valley to the sierra?

Ans. I did.

19th ques. When you went from the oak tree to the sierra across the valley of the Calaveras, did you stop at a tree or any other landmark?

113 Ans. There was a tree a little beyond the point of stopping in the same line.

20th ques. Were any points marked as landmarks in giving said possession?

Ans. No artificial monuments or landmarks were made; the sierra and the two arroyos were the boundaries.

21st ques. Is there a tree standing in a chemisal on the east side of the Calaveras valley, on the slope of the sierra, near where the line passes?

Ans. There are many trees and much chemisal.

22d ques. Is there a sausal near the south end of the Calaveras valley?

Ans. There are a few willows, I would not call it a sausal, there is an ensenal.

his
JOSÉ ANTONIO × ALVISO
mark.

Testimony of Nasario Galindo.

Nasario Galindo, being sworn, deposes as follows:

1st ques. What is your name, age, and place of residence?

114 My name is Nasario Galindo; I live at the Agua Caliente, in the county of Alameda.

2d ques. Are you acquainted with the rancho of Tularcitos; if so, how long have you known it?

Ans. I know it, and have known it for thirty years.

3d ques. Have you ever lived on the rancho Tularcitos?

Ans. I have never lived there, but always went there to assist in rodeos.

4th ques. When assisting in rodeos, did you become acquainted with the boundaries of said rancho?

Ans. I did not see them measured, but they have often told me what were the boundaries of the rancho.

5th ques. State what these boundaries were.

Ans. The Arroyo de la Colera on the north, the Arroyo Monte de los Coches on the south, and the sierra to the bank of the Calaveras on the other side.

115 6th ques. How long have you known these as the boundaries of the rancho?

Ans. Some twenty or more years.

7th ques. Were these boundaries recognized by the adjoining landholders as the rodeo boundaries of the Los Tularcitos?

Ans. They were recognized as the rodeo boundaries of said rancho by the adjoining landholders.

8th ques. Look at the map marked A, Ex. No. 1 to the deposition of José Antonio Alviso, and state whether you recognize it in its general features as a correct delineation of the rancho of Los Tularcitos.

Ans. I do.

9th ques. Can you point on this map the place called Tularcitos; and if so, you will mark the same with the letter A?

Ques. Can you point out on said map the place know as the plain of the Calaveras; and if so, you will mark the same with the letter D.

Ques. Can you point out on the map the line of sierra that forms one

116 of the boundaries of the rancho; and if so you will mark it with the letter C.

12th ques. What is indicated by the dark lines on the map lying immediately below or west of the Calaveras?

Ans. They indicate the Cero mountain, on the left of the map, and the low hills separated the Calaveras from the Tularcitos.

13th ques. Have you ever known any other mountain in that neighborhood or range of mountains called the Sierra, except the one you have indicated by the letter C?

Ans. I know of none other so called in this vicinity.

14th ques. Who occupied the Calaveras valley when you first knew it?

Ans. The deceased, Higuera.

15th ques. Who has continued to occupy it from that time till the Americans took pook possession of the country?

Ans. The Higueras.

117 *Cross-examined by opposite counsel.*

1st. ques. Look at the map heretofore referred to, and state whether you know the location marked on said map huerta.

Ans. I know said place.

2d ques. What is the distance from said place to the nearest house on said rancho?

Ans. It adjoins the same.

3d ques. How far is it from the huerta to the estero?

Ans. I do not know certainly, it may be a league, a little more or less.

4th ques. How far from said huerta to the foot of the sierra on the east of the Calaveras?

Ans. About two leagues, a little more or less.

5th ques. Do you know the place from which the rancho takes its name, called Tularcitos?

Ans. I know the place, it is the place I have indicated, marked the
118 letter A; there is there a little lake *there* surrounded tule, from which it takes its name.

6th ques. What is the distance from this point to the Estero?

Ans. About a league and a half, or a little less.

7th ques. What is the distance from the laguna to the foot of the sierra on the east side of the Calaveras plain?

Ans. It may be a league, or a little more.

8th ques. What is the width of this rancho from N. to S. in a line with the hills, from one creek to the other?

Ans. It may be two leagues.

9th ques. Is that laguna about the middle of the rancho going from N. to S.?

Ans. It is nearer the south side than the north?

10th ques. Do you know through what part of the rancho the road passes coming from San Leandro to San José?

119 Ans. It passes to the east of the Penitencia.

11th ques. How far west of the huerta does the road pass?

Ans. About 800 varas.

12th ques. How near does this road pass to the laguna?

Ans. About a league, a little more or less.

13th ques. Look on the map already referred to at the point marked "posa," and state if you remember that place on the plain of the Calaveras?

Ans. I remember the place; there is a little pond of water that sometimes goes dry, south of it in the valley; there is a sausal, and there is a little stream that sometimes runs out of it towards the north.

14th ques. What is the distance from the posa just described to the laguna in the Tularcitos?

Ans. It may be one league.

15th ques. Do you recognize the point on the map marked "chemisal," with the representation of a tree? If so, describe it.

120 Ans. I have seen it from a distance. I have never been there; it appears to be a tree with chemisal around it. I do not know what kind of a tree it is.

16th ques. Is there any creek flows near the chemisal where the tree stands?

Ans. There is a creek called the Arrea de la Calera, a few hundred yards from said chemisal, on the north of the same, running down past the huerta and houses. The creek is rather on the N. W. than the N. of the tree; it does not head so far east as the tree.

17th ques. Is the tree surrounded by the chemisal on the side of the sierra, or down on the plain?

Ans. It is on the cerro and not on the sierra; the chemisal I spoke of is to the west, and not to the east of the Calaveras. I know of but one chemisal.

18th ques. Is the sausal you spoke of as being near the posa, at the southern end of the Cavaveras valley?

Ans. It is near the south end.

121 *Testimony of Anto. Ma. Pico, in relation to the location of the rancho Los Tularcitos, taken before J. W. Mandeville, U. S. Sur. Gen'l, June 2d, 1858.*

Antonio Ma. Pico, being sworn, deposes as follows:

1st ques. What is your name, age, and place of residence?

Ans. My name is Anto. Ma. Pico; I reside in San José; my age is forty-nine years. I have resided in San José since the year 1835.

2d ques. What office, if any, have you filled under the Mexican government in the jurisdiction of San José?

Ans. In the year 1835 I was alcalde; afterwards I was syndic; in 1842 I was justice of the peace; and 1844 and 1845 I was again alcalde; in 1849 I was prefect.

3d ques. Are you acquainted with the rancho Los Tularcitos, granted to José Higuera?

Ans. I am.

4th ques. Are you acquainted with the boundaries of said rancho; if so, please describe them?

122 Ans. I know the boundaries of said rancho, having been on said rancho. There is an arroyo in a cañada in the sierra that runs from south to north, the sierra on the east side of this arroyo is the boundary; on the side next the mission of San José the boundary is a cerro; on the south it is bounded by the lands of José Ma. Alviso; under the old grant the lomas muertas were the boundaries on the west, but the grant was afterwards augmented so as to include the lands on the plain.

5th ques. What was the name of the cañada of which you have spoken in your last answer, through which there was a creek flowing to the north?

Ans. The arroyo was called "Las Calaveras," and the cañada bore the same name.

6th ques. Would the boundaries as you have described then include that portion of the arroyo and cañada lying south or S.E. of the cerro which you have described as the boundary on the side of San José?

Ans. The arroyo and cañada are within the limits as I have described them.

123 7th ques. Is there any range of hills or mountains in that vicinity known as the sierra except the one which you have described as lying immediately east of the arroyo and cañada of Calaveras?

Ans. I know of no other range of hills or mountains in that vicinity known as the sierra.

Cross-examined.

1st ques. When did you first know the rancho described by you?

Ans. I have known it since about the year 1835.

2d ques. Who occupied at the time?

Ans. José Higuera.

3d ques. Had he then a dwelling-house on it; if so, at what place?

Ans. He had houses below where he lived and also above; the house below in which he lived is laid down on the map as near the enclosure marked "Huerta;" the house above was in the direction of the sierra from the laguna

124 of the Tularcitos; the distance from said laguna to the house above may be 1,000 varas more or less.

Ques. How far was the upper house, last mentioned, from the sierra which you have mentioned as the eastern boundary of the rancho?

Ans. I do not know; I cannot say; it may be one mile, it may be two, or it may be more.

Ques. Which is the greatest, the distance from the lower house to the upper house, or the distance from the upper house to the sierra?

Ans. I cannot say certainly; it may be about the same distance, more or less.

Ques. Have you been often through the valley of the Calaveras you have just described?

Ans. I have been a few times.

Ques. Do you know a place in the valley of calaveras represented on the map as "posa?"

Ans. There is a posa, or spring of water, in that valley on the east

125 side of the lomeria, or low hills.

Ques. Do you remember a sausal a little south of the springs you have described, in the same valley?

Ans. There are willows with other kinds of trees.

Ques. In the same line and towards the N.E. corner of the rancho as you have described it, and on the west side of the sierra which you have just described, do you remember a tree surrounded by chemisal, indicated on the map by the figure of a tree and the word "chemisal?"

Ans. There are chemisal and some large trees in that direction.

Ques. How high up on the sierra is that place where the chemisal and large trees are you have just described?

Ans. There are trees and chemisal in different parts, but I cannot speak of any particular tree.

ANTONIO MA. PICO.

126 *Testimony of Don Pedro Chaboyo, in relation to the location of the rancho Los Tularcitos, taken before J. W. Mandeville, U. S. Surv. Gen'l for California, June 24th, 1858.*

Examination of Pedro Chaboya by R. Aug. Thompson, counsel for claimants.

Ques. What is your name. age, and place of residence?

Ans. My name is Pedro Chaboya; I am more than sixty years old; and live in the pueblo of San José, and have lived there since 1823.

Ques. Do you know the rancho of Los Tularcitos, confirmed to the heirs of José Higuera, and how long have you known it?

Ans. I do know it, and have known it since and prior to the time it was founded, which was about 1820.

Ques. State, if you know, who first occupied that rancho, and by what authority?

Ans. It was first occupied by José Higuera, now deceased, and by authority, I think, of Pablo Vincente de Sola.

127 Ques. Do you know the boundaries of the rancho as occupied by José Higuera, and if so, state them?

Ans. I do; it is bounded on the north by the arroyo of the "Calera," which runs to the Sierra Grande, passing over the cerros, (hills;) on the east by the Sierra Grande; on the south by the Arroyito de los Coches; and on the west by the Arroyito de la Penitencia and the esteros, (estuaries.)

Ques. Do you know the plain or valley of the Calaveras? and if so, state where it is situated.

Ans. I know the plain or valley known as the "Calaveras;" it is situated between the Sierra Grande and the cerros, (hills.)

Ques. Do the boundaries, as you have described them, include the plain of the Calaveras?

(Question objected to by counsel for contestants, as leading.)

Ans. They do.

Ques. By whom, to your knowledge, was the plain of "Calaveras"

128 first occupied, and when?

Ans. It was first occupied by José Higuera; I do not recollect the date exactly, but it was occupied after the grant by Pablo Vincente de la Sola. It had been occupied previously by the pueblo of San José; the cattle of Higuera ranged from the Tularcitos to the "Calaveras."

Ques. Did you ever know any one else to occupy or claim to own the valley of "Calaveras," from the time of Sola's grant to José Higuera up to the occupation of the country by the Americans?

Ans. I never did. Before the grant of Higuera, in bad seasons when water and pasturage were scarce, the people of the pueblo of San José pastured their cattle there.

Ques. Do you know whether the "vecinos," or people of the pueblo, ever pastured their cattle there, or claimed the right to do so, subsequent to the grant from Governor Sola to Higuera?

Ans. They never did.

Ques. Did you ever hold any office or offices in the pueblo of San José; if so, during what period and what offices were they?

129 Ans. I held the office of syndico first, and afterwards; was twice alcalde. I served as syndico one year, about 1832 or 1833, but do not recollect positively as to the time. I was alcalde in 1834, and served as such one year, and afterwards was alcade in the year 1846.

Ques. During your residence in San José were you familiar with the business and affairs of the pueblo?

Ans. I was acquainted with the business and affairs of the pueblo.

Ques. Could there have been any claim by the people or "vecinos" of the pueblo to the "Calaveras" valley without your knowing it, subsequent to Sola's grant to José Higuera?

Ans. There could not have been and there was none.

Ques. Do you know Aguton Ruiz? If so, where does he reside?

Ans. I do. He lives on the rancho of the Tularcitos, between the Tularcitos and the arroyo of the Coches. I do not know by what right or title he

130 lives there, unless it is as a squatter, or as a relative of the Higueras.

Ques. Do you know the general reputation of Agaton Ruiz for truth and veracity?

Ans. I am acquainted with his reputation and know that it is bad, and that by everybody he is considered as a vagabond.

Ques. Whether from that general reputation you would believe him on oath?

Ans. I would not.

Ques. How far do you reside from the rancho of Los Tularcitos?

Ans. About two or three leagues; I cannot say exactly. It is more than three leagues.

Ques. During the life time of José Higuera, were you well acquainted with him and the rancho of the Tularcitos?

Ans. I was well acquainted with José Higuera and his rancho. Higuera was a soldier in my company.

Ques. Did you ever know Aguton Ruiz as a mayor domo on the

131 rancho of the Tularcitos during the lifetime of José Higuera?

Ans. I never saw him there as mayor domo, and never have heard that he was mayor dome. He was a boy when he came there; he was first cousin to Higuera; he lived there a short time; he went off and was married, and returned; he never was employed there by Higuera.

Question by J. W. Mandeville, U. S. surveyer general.

Ques. Where does the creek of Calaveras empty, that is, the same creek that runs through Calaveras valley?

Ans. The creek of Calaveras empties into the estero near Union city. This creek is the largest and longest creek; there are other creeks or arroyos, which are smaller and run into this. This is also called the Alameda creek.

PEDRO CHABOYA.

OFFICE OF THE SURVEYER GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyer general of the United States for the

132 State of California, by virtue of the power vested in me by law, do hereby certify that the 22 preceeding and hereunto annexed pages, numbered from one to 22 inclusive, exhibit a true, full, and correct copy, of the depo-

sitions of José Antonio Alviso, Nasario Galindo, Antonio Maria Pico, and Pedro Chaboya, in relation to the location and survey of the rancho "Los Tularcitos," claimed by the heirs of José Higuera, deceased, as the same appear on file in this office.

In testimony whereof, I have hereunto signed my name officially,
[SEAL.] and caused my seal of office to be affixed, at the city of San Francisco, this 27th day of February 1860.

J. W. MANDEVILLE,
Surveyor General for California.

Examined and found correct.

E. CONWAY, *Chief Clerk.*

Endorsed: Filed February 27, 1860.

W. H. CHEVERS, *Clerk.*

(Here follows map page 132.)

133 *Certified copy of Ex. "A" from U. S sur. gen'l.*

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyer general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory, or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle private land claims in California, by virtue of the power vested in me by law, do hereby certify that the preceding and hereunto annexed page of tracing paper numbered from one to — inclusive, exhibit a true, and accurate copy of a map attached to and forming part of a document on file in case No. 148, on the docket of the board of land commissioners, endorsed: "Antonio Higuera *et al.* Tularcitos espediente. Filed in office May 21st, 1853. Geo. Fisher, Secretary. Exhibit 'A' annexed to petition, marked No. 1, A. F., annexed to the deposition of Juan B. Alvarado."

In testimony whereof, I have hereunto signed my name officially,
134 [SEAL.] and caused my seal of office to be affixed, at the city of San Francisco, this 24th day of May, 1858.

J. W. MANDEVILLE,
U. S. Surveyer General for California.

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, by virtue of the power vested in me by law, do hereby certify, that the three preceding and hereunto annexed pages, numbered from one to three inclusive, exhibit a true, full, and correct copy of a document, as the same appears on file in this office, and included in the testimony on file, in relation to the location and survey of the rancho "Los Tularcitos," claimed by Antonio Higuera *et al.*

In testimony whereof, I have hereunto signed my name officially,
135 [SEAL.] and cause my seal of office to be affixed, at the city of San Francisco, this 25th day of February, 1860.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Examined and found correct.

R. C. HOPKINS, *Chief Clerk.*

Endorsed: Filed February 27, 1860.

136 W. H. CHEVERS, *Clerk.*

137 *Deposition of Jas. T. Stratton.*

United States district court, northern district of California.

SAN FRANCISCO, *April 3d*, 1860.

THE UNITED STATES
vs.
HEIRS JOSÉ HIGUERA.

On this day before me, Jno. B. Williams, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came James T. Stratton, a witness produced on behalf of the United States in case No. 228, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 148 on the docket of the said board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 148 on the docket of the said board of commissioners, and was duly sworn and testified as follows, his evidence being given in English.

Present: Tully R. Wise, esq., acting U. S. att'y. The attorneys for claimant, Messrs. Thompson, Irving, and Pate, were duly notified, but did not attend.

138 Examination commenced at 11½ a. m.

Questions by acting U. S. att'y.

Question 1. State your name, age, residence, and occupation.

Answer. James T. Stratton; lawful age; residence, Alameda county; occupation, surveyor.

Question 2. How long have you been a surveyor, and what length of time in Cala.?

Answer. I have been a surveyor 13 years, nearly 10 years of which time in Cala.

Question 3. Are you or not familiar with the location and survey of Mexican grants in this State?

Answer. I am very familiar.

Question 4. Have you or not had occasion frequently to examine diseños, grants, and other documents, relating to the granting of lands under the former government with the view of location and survey?

139 Answer. I have, very frequently.

Question 5. Look at the map now shown you, and marked Exhibit No. 1 to your deposition, and state if you know by whom it was made, and when.

Answer. It was made by myself during the months of November and December, 1859.

Question 6. State what the said exhibit represents, and the data from which it was made.

Ans. It represents the Tularcitos rancho, the Calaveras valley, and the country in the vicinity. It is a topographical sketch of that country, and was made on the ground. The elevations marked in red ink at different points were obtained from actual observations and were not estimated.

Question 7. Look at the copy of the original diseño on file in the transcript, and considering that diseño as a rough sketch of the country without re-

140 gard to the names marked thereon, state whether it represents any portion of the country delineated on your exhibits; and if so, what portion.

Answer. It appears to me that the diseño represents, in a tolerably correct manner, the country represented on Exhibit No. 1, as lying westerly of the ridge on which is marked a tree with the word chemisal.

Question 8. From your examination of said diseño, is it your opinion that the county delineated on Exhibit No. 1, lying easterly from said ridge, is represented on the diseño?

Answer. My opinion is, that it is not; no part of it.

Question 9. Indicate on exhibit one the place shown on the diseño marked 'ina, Tularcitos."

Answer. Judging from the relative position of that place from the known points represented on the diseño, I have no hesitation in saying that it
141 is in the vicinity of the outlet of the first pond to the eastward of Higuera's house, and have marked the place on Exhibit No. 1, "Vina," "Tularcitos." Where I have marked "Tularcitos," the ground is of a wet, marshy character. The cañon leading out into the plain through which the blue line runs, is studded on both sides with oak trees.

Question 10. Designate on exhibit one a point where, from the description in the expediente of the measurement made by Luis Peralta in 1821, viz: on the south 600 varas, on the north the same, on the west 1,400 varas, and on the east 6,050 varas, you would judge was the central point of such measurement.

Adjourned until 10 a. m. to-morrow, April 4, 1860.

SAN FRANCISCO, *April* 4, 1860.

Present: Tully R. Wise, acting U. S. att'y, R. A. Thompson, esq., for claimant, & the witness.

142 The counsel for claimants objects to question and answer 8, as giving the opinion of the witness, it being a matter for the court and not the witness to decide.

Counsel for claimants object to question 10, because it is not shown that the witness knows anything of the juridical possession given by Luis Peralta in 1821, where he commenced his measurement, or in what manner they were made, and because his answer must be his mere opinion founded upon a vague conjecture, without proper data to guide him.

Answer. Judging from the topography shown on the diseño, I should suppose it was somewhere in the neighborhood of the outlet of the first pond to the east of Higuera's house, where I have before marked "Vina."

143 Question 11. Draw on Exhibit No. 1 a cross, the centre of which shall be at the point designated in your last answer, and the points heading north, south, east, and west, agreeably to the points of the compass on the diseño.

Answer. I have so marked Exhibit No. 1 with a dotted cross.

Question 12. Standing at that point, can you see the tree marked Chemisal? And if so, indicate on said exhibit the line of sight towards the southeast, and designate the first place where you can see beyond the ridge on which said tree is situated.

Answer. I can see the tree from said point, and from the same point. Probably the only elevation beyond the ridge on which is situated the chemisal tree that can be seen is that at the extreme southeast portion of the exhibit.

Question 13. Designate on Exhibit No. 1 a point on the plain where
144 you can see the sierra beyond the ridge on which is situated the chemisal tree, and also designate the point on that ridge over which such sight would extend.

Answer. It can probably be seen from any point on the westerly limit of the rancho as surveyed; but only through the place where the road passes near the southeast corner of the survey.

Question 14. Standing at the point marked with a cross on Exhibit No. 1, and looking up in the direction from the eastern point of said cross, would the vision be obstructed or not?

Answer. I think the only point which would not be obstructed is where the road passes as before mentioned.

Question 15. How far from the point marked with a cross on Exhibit 1 can you see up the valley in which the sausal is laid down?

Answer. Standing at about the place where the letter S occurs in
145 Tularcitos, the view up that valley would be unobstructed for several miles in a southeast direction.

Question 16. Examine the copy diseño on file in the case, and, from the position of the chemisal tree on it, locate on Exhibit No. 1 the place where the word "Calaberes" appears on the diseño.

(Objected to, because the question assumes that the tree marked chemisal on the diseño is the same as the tree marked chemisal on Exhibit 1.)

Answer. The word Calaberes being to the southeasterly from the chemisal tree on the diseño, must be in the neighborhood of the second pond, easterly from Higuera's house. I mark the place [Calaberes.]

Question 17. Do your know, from your observation of the ground, of any other tree than the one marked chemisal on Exhibit No. 1 which would correspond with the position of the one marked on the diseño?

Answer. I know of no other one which would answer the description.

146 Adjourned until to-morrow, Thursday, at 11 a. m.

SAN FRANCISCO, *April 5*, 1860.

Present: Acting U. S. Att'y Wise, R. A. Thompson, esq., for the claimants, and the witnesses.

Question 18. Examine the diseño, and state, from your knowledge of the country acquired while making the topographical survey, whether, in the Calaveras valley, as shown on Exhibit No. 1, you found any such natural landmarks as posa and sausal, as laid down on said diseño.

Answer. There are none whatever in the positions designated on the diseño.

Question 19. Look on the copy-plat of the official survey on file in the case, and state if the exterior lines of that survey are laid down on Exhibit No. 1.

147 Answer. They are, and designated by the shaded red lines. The scale of the copy-plat and Exhibit No. 1 is the same—20 chains to an inch.

Question 20. Examine the decree of the board of land commissioners and the diseño, and, from your knowledge of the country, and as a surveyor, state whether or not you would locate the grant as show by the official survey; and if not, how differently.

(Objected to, because it is assuming for the witness functions of the court, and requiring him to give his opinion on the question at issue.)

Answer. I should locate it in the same manner, with the exception of the northwesterly corner. The decree and the diseño shows that the westerly line should be extended northwardly to the estero.

Question 21. Examine the certified copy of the diseño from the archives in the case of the pueblo of San José, being Exhibit No. 2 to your deposi-
148 tion, compare it with the copy diseño on file herein, and say whether you can identify upon said exhibit the country represented by the diseño.

Answer. It is very easily recognized. It is shown in the extreme northern corner of the map.

Question 22. Mark on Exhibit No. 1, as near as you can, the country embraced in the diseño.

(Same objection.)

Answer. I have marked on Exhibit 1, in red, the country which, in my opinion, is shown by the diseño.

Cross-examination.

Question 23. Where, and how far from this rancho, do you reside?

Answer. In Alameda co ; about 33 miles from the ranch.

Question 24. Do you now hold or claim, or have you at any time held
149 or claimed, any interest in the lands embraced in the Tularcitos rancho, as claimed by its present holders?

Answer. I do not now hold, nor have I ever held or claimed, any interest therein.

Question 25. Do you now hold or claim, or have you at any time held or claimed, any lands claimed to be included in any Spanish or Mexican grant adversely to such grant?

Answer. I have never.

Question 26. At whose instance did you make the topographical survey and map marked Exhibit No. 1?

Answer. I made it the request of Mr. Buick and Mr. Shuart, a committee appointed by the claimants in Calaveras valley, adversely to the ranch.

Question 27. Point out on Exhibit No. 1 the places where Messrs. Buick and Shuart reside, respectively.

150 Answer. I have marked in red on said exhibit the place where they reside.

Question 28. By whom were you paid for said survey and map?

Answer. I was paid by the gentlemen at whose request I made the survey.

Question 29. Do you know anything of the juridical measurement made by Luis Peralta in 1821?

Answer. I know nothing more about it than what I have learned from the testimony which has heretofore been taken in the case.

Question 30. From what part of the description contained in the expediente of the measurement made by Luis Peralta in 1821, referred to in question 10 of your examination-in-chief, do you ascertain the central point of said measurement?

Answer. There is nothing in the description which indicates the central
151 point from which the measurement was made.

Question 31. How, then, did you ascertain the central point, as exhibited on Exhibit No. 1?

Answer. I can only locate it by supposing that the easterly limit of the measurement extended to the easterly limit of the diseño, the augmentation which was afterwards solicited being undisputedly to the westward, reference being had also to the testimony taken in the case.

Question 32. Taking the point you have indicated as the central point of the juridical measurement, and running from that point due east, mark on Exhibit 1 the point where a line 6,050 varas would terminate.

Answer. I have marked the place in red on said exhibit, 6,050 varas from central point—dotted line.

Question 33. What is the extent of the valley or cañon which you have marked [Calaberas,] and how much of it is level land?

152 Answer. Within the lines of the official survey there is about 200 acres of level land and about 400 more of rolling.

Question 34. By what name, if any, have you known that valley?

Answer. I have no knowledge of my own as to its true name. The claimants of the ranch call it Tularcitos; those opposing the grant the Calaveras.

Question 35. When did you first hear it called Calaveras?

Answer. In the first part of the year 1857, when I first became acquainted with that part of the country.

Examination closed.

JAS. T. STRATTON.

Sworn to and subscribed before me this 5th day of April, A. D. 1860.

JNO. B. WILLIAMS,
U. S. Comm'r.

Endorsed: Filed April 6th, 1860.

W. H. CHEVERS, *Clerk.*

(Here follows two maps page 152.)

153 *Exhibit No. 2 to depo'n of J. B. Stratton.*

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the preceding and hereunto annexed page of tracing paper, numbered one, inclusive, exhibits a true, full, and correct copy of the original diseño attached to and forming part of the espediente entitled "*Espediente promorido por el y ayuntamiento de S'n José en pretencion del señalamiento de termino para el fundo, legal de dicho poblacion,* 1837, *No.* 339," as the same now appears on file among the archives
154 aforesaid, and remaining in my office.

In testimony whereof, I have hereunto signed my name officially, and
[SEAL.] caused my seal of office to be affixed, at the city of San Francisco this fourth day of April, 1860.

J. W. MANDEVILLE,
U. S Surveyor General for California.

Endorsed: Filed April 6, 1860.

W. H. CHEVERS, *Clerk.*

155 *Deposition of Anto. Chaboya.*

District court of the United States, northern district of California.

THE UNITED STATES
vs.
HEIRS OF JOSÉ HIGUERA.

SAN FRANCISCO, *June 13th*, 1860.

On this day before me, William H. Chevers, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Antonio Chaboya, a witness produced on behalf of the claimant in case No. 228, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 148 on the docket of the said board of commissioners, and was duly sworn and testified as follows, his evidence being interpreted by a sworn interpreter, to wit, by A. D. Splivalo:

Present: R. Aug. Thompson, esq., of counsel for claimant, and Tully R. Wise, acting U. S. att'y for the U. S.

Question 1st, by counsel for claimant. What is your name, age, and
156 place of residence?

Ans. My name is Antonio Chaboya; my age is 57 years, and I reside in Santa Clara county.

2d. Do you know the rancho Tularcitos, claimed by the heirs of José Higuera in this case? If so, how long have you known it?

Answer. I do know it. I have known it for thirty or forty years.

3d. Look at the topographical map marked "Exhibit No. 1 to deposition of Jas. T. Stratton," in this case, and point out upon it the position of the laguna de los Tularcitos, and the valley of the same name.

Ans. The witness points out the object marked "Tularcitos" in green, and "560 ft." in red, as the laguna of Tularcitos, The valley as the white space extending above and below the lake, and bounded by the hills colored
157 in brown on both sides.

4th. Do you know of any houses in the Tularcitos valley? If so, when were they built, and by whom?

Ans. There are houses there. I don't know when they were built; when I first saw them they had been built by José Higuera, and his sons were living there.

5th. Point out on said Exhibit No. 1 the position of those houses?

Answer. The witness points out, as the situation of the houses, a point a short distance to the southeast of the laguna and near the road.

6th. Was there a vineyard in the Tularcitos valley?

Ans. Yes; I have seen it.

7th. How far was the vineyard from the laguna, and in what direction?
158 Ans. It is from three to four hundred varas to the north of the laguna at the foot of the hills, at a place where a very small rivulet flows into the valley.

8th. Into what streams do the waters of the laguna run?

Ans. Into the Arroyo de los Caches, which runs by the house of José Maria Alviso.

9th. Is there any other valley in that neighborhood known as the valley of Tularcitos, except the one you have described?

Ans. I know of no other.

Cross-examination.

Questions by acting U. S. att'y:

10th. What were the boundaries of the Tularcitos rancho when you first knew them? Describe them particularly.

Ans. I don't know the boundaries.

159 11th. Did you ever hear José Higuera describe the extent and situation of the land he claimed?

Ans. I never heard them.

12th. Do I understand, then, that you have no knowledge, from Higuera or otherwise, of the land petitioned for and granted to him, nor its extent and location?

(Question objected to, because it is irrelevant and not responsive to the examination-in-chief.)

Ans. I know the part where they lived, but I do not know how far the boundaries reached.

13th. How do you know that the place which you have designated Tularcitos on said Exhibit No. 1 is the same place so designated by Higuera when petitioning for the land?

Ans. Because I have always seen Higuera there, with his sons, his vineyard, and he worked there, and it was always recognized as his own.

160 14th. State how much nearer the place you have described as Tular-

citos is to José Maria Alviso's house than to Higuera's house, on the Arroyo del Calera?

Ans. It is nearer to Alviso's than Higuera's house, but I don't know how much.

his
ANTONIO + CHABOYA.
mark.

Sworn to and subscribed this 13th day of June, 1860, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed September 17th, 1860.

W. H. CHEVERS, *Clerk.*

Stipulation in reference to the testimony of J. A. Alviso.

161 In the district court of the United States in and for the northern district of California.

THE UNITED STATES
vs.
THE HEIRS OF JOSÉ HIGUERA. } No. 228.

In the matter of the survey and location of the rancho "Los Tularcitos," confirmed in the above entitled cause.

It is hereby stipulated and agreed, by and between the claimants in the above-entitled cause and the district attorney of the United States, on behalf of the United States, that the following testimony was given by José Antonio Alviso, a witness introduced and examined on behalf of said claimants, and whose testimony was presented in the form of a deposition, which was read in evidence on the hearing of the objections to the survey and location of said rancho, which said deposition since said hearing has been lost or mislaid, and is the same referred to in the subsequent deposition of the same witness, now on file in this cause.

162 It being hereby stipulated and agreed that the annexed statement of the contents of said deposition shall stand in the place of and be used with the same force and effect as said original deposition in all proceedings in this cause.

Deposition of José Antonio Alviso, a witness produced on behalf of the claimants, who, having stated his name, age, and place of residence, testified substantially as follows:

I was present when possession was given to José Higuera of the Rancho de los Tularcitos, and when the measurement thereof was made by Don Luis Peralta, in the year 1821.

I took no part in the proceedings. I was but a spectator.

The point from which all the measurements were made was a tree standing a short distance southerly from the Laguna de los Tularcitos, a short distance west from the house of José Higuera. That tree still stands there.

163 The line which was run to the east from that tree reached to the base of the Sierra Madre, on the east side of the Calaveras valley—I do not know the distance—and the line on the east extended from the Sierra Azul on the north to the place called Los Bueyes on the south. The line towards the east, before reaching the Calaveras valley, passed over some low hills, *(lomas muertos.)* The boundary of the Tularcitos rancho was the Arroyo de la Calera on the side of the mission of San José, and the Arroyo de los Coches on the south.

S. O. HOUGHTON,
Att'y for Claimants.

The foregoing testimony objected to by the U. S. as incompetent; but it is admitted that the foregoing is a substantially correct abstract of the direct examination of the witness.

WM. H. SHARP, *U. S. Att'y.*

164 Endorsed: Filed January 6, 1863.

W. H. CHEVERS, *Clerk.*

Monition.

165 UNITED STATES OF AMERICA,
Northern District of California.

[SEAL.] The President of the United States of America to the marshal of the United States for the northern district of California, greeting:

Whereas objection has been made to the official survey and location of the land finally confirmed in case No. 228 to heirs José Higuera, known as "Los Tularcitos," and situated in the county of Santa Clara, in said district:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to give due notice to all parties having or claiming to have an interest in such survey and location that they be and appear before the district court of the United States for said district, sitting in land cases, on or before Wednesday, the 26th day of September, A. D. 1860, at 11 o'clock a. m., (if that day shall be a day of jurisdiction, and if not, on or before the next Wednesday thereafter,) then and there to intervene for the pro-
166 tection of such interest, or their defaults will be taken. And what you shall have done under this writ do you then and there make return thereon.

Witness the Hon. Ogden Hoffman, judge of said court, at San Francisco, in said district, this 20th day of August, A. D. 1860.

W. H. CHEVERS, *Clerk.*

The within monition was received by me on Monday, the 20th day of August, 1860, and in obedience thereto I have given due notice, as therein commanded, by causing the publication of said notice for four consecutive Wednesdays in the San Francisco Herald, commencing on the 22nd day of August, 1860, and for four consecutive Saturdays in the San José Tribune, a paper published nearest the land, commencing on the 25th day of August, 1860.

Dated San Francisco, Aug. 22d, 1860.

P. L. SOLOMON,
U. S. Marshal.

167 Endorsed: Filed Sept. 26th, 1860.

W. H. CHEVERS, *Clerk.*

Order on return of monition.

At a stated term of the district court of the United States of America for the northern district of California, on Wednesday, the 26th day of September, in the year of our Lord one thousand eight hundred and sixty.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
HEIRS OF JOSÉ HIGUERA.

In land cases.—District court No. 228. Land com. No. 148.

And now at this day, the United States marshal having made return upon the monition heretofore issued in this cause, that he had given due notice
168 as therein commanded, on motion of R. Aug. Thompson, attorney for

the claimants, proclamation was made that all parties having or claiming to have an interest in the survey and location of the land finally confirmed in the above-entitled cause appear and intervene for the protection of such interest.

The U. S. attorney and John B. Williams, esq., appeared in behalf of the United States, and Messrs. Thompson & Glassell for the claimants, no other parties appearing. Whereupon it is ordered that the default of all parties not appearing as aforesaid be, and the same is hereby, entered.

Endorsed: Filed September 26th, 1860.

W. H. CHEVERS, *Clerk.*

169 *Deposition of José Fernandez.*

District court of the United States, northern district of California,

SAN FRANCISCO, *October 3d.* 1860.

THE UNITED STATES
vs.
HEIRS OF JOSÉ HIGUERA.

On this day before me, William H. Chevers, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came José Fernandez, a witness produced on behalf of the claimant in case No. 228, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 148 on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by a sworn interpreter, to wit: by I. M. Tewkesbury.

Present: R. Aug. Thompson, esq., of counsel for claimant, and Calhoun Benham, esq., U. S att'y, for the U S.

Question 1st, by counsel for the claimant: What is your name, age,
170 and residence?

Ans. José Fernandez, sixty-one years, county of Santa Clara.

2d. Do yau know the rancho "Los Tularcitos," claimed by the heirs of José Higuera, and how long have you known it?

Ans. I do. I have known it since the year 1826.

3d. Do you know the boundaries of the rancho?

Ans. I do.

4th. What are its boundaries on the side of the Calaveras valley?

(Question objected to as leading, and because the boundaries cannot be proved by parol testimony, there having been juridical possession given.)

Ans. The place called "Los Bueyes" on the south; on the north there is a blue rock, which is called "Piedra Azul."

171 5th. What is the object known as the Los Bueyes?

Ans. It is a place where the cattle of the pueblo used to go and graze.

6th. How far south of the Calaveras valley from the Los Bueyes?

Ans. From 800 to 1,000 varas.

7th. What is the object known as the Piedra Azul, which is the northern boundary?

Ans. They are large stones (a *penasco)* forming a portion of the hill.

8th. What is the height of the *penasco,* or blue rock, of which you speak?

Ans. I don't recollect.

9th. Is that *penasco,* or blue rock, a well-known object in that neighborhood?

Ans. Yes, sir; it is a well-known and noted object in its neighborhood.

172 There are one or two oak trees near it.

10th. In what direction from the Calaveras valley is the Piedra Azul *penasco?*

Ans. It is to the north of the valley, and above it.

11th. How far from the northern end of the Calaveras valley is the Piedra Azul?

Ans. I am not certain, but I think it is between 500 and 600 varas.

12th. Is it to the north or the south of the Arroyo or Rio de Calaveras?

Ans. To the north.

13th. How far to the north of the Arroyo de Calaveras is the Piedra Azul?

Ans. I am not sure; about 200 varas, more or less.

14th. Look at the map marked "Exhibit No. 1 to the deposition of
173 James T. Stratton for the U. S.," filed in this case, and state whether you recognize, from your knowledge of the country, the localities thereon delineated as the Calaveras valley and the Arroyo de Calaveras?

Ans. I do.

The witness recognizes and points out, what is marked on the map Calaveras valley, as the valley or plain of Calaveras, and what is marked as the Calaveras river on the map as the Arroyo de Calaveras.

15th. Please indicate on the said map, as near as you can, the rancho Los Bueyes on the south, and the Piedra Azul or *penasco* on the north.

Ans. Here they are.

The witness indicates and points out the place marked "Los Bueyes" (in pencil) on the map on both sides of the arroyo. He also indicates and points out the point marked Piedra Azul (in pencil) on the map.

174 *Cross-examination.*

Questions by U. S. att'y:

Ques. 16th. Did you ever before see this map marked "Exhibit No. 1. to" deposition of J. T. Stratton, &c.; if so when?

Ans. I saw it about two hours ago in this office. I never saw it before that.

17th. You mean that you saw it two hours ago, and prior to the present examination, do you not?

Ans. Yes, sir.

18th. Were the natural objects on the map at that time explained to you?

Ans. They told me that this was the valley of the Calaveras, nothing more.

19th. Would you have recognised the map as showing the topographical features of that part of the country, without such explanation?

175 Ans. I would not have known it unless I had such explanation. After they told me this was the Calaveras valley, I recognized all the balance, and I am well acquainted with all the localities.

20th. State the distance from the place marked Los Bueyes (in pencil) to that which is marked Piedra Azul (in pencil.)

Ans. It is quite a distance, but I cannot calculate it; it is so long since I was there. It is about fourteen or fifteen years since I was there.

21st. Who told you that Los Bueyes was the boundary of the rancho on the south, and Piedra Azul on the north?

Ans. Nobody told me; I know it of my own knowledge. I have always recognized and known them as such.

22d. Do you own any land adjoining the rancho Tularcitos, which has made it necessary for you to recognize and respect those boundaries.

176 Ans. I never owned any land adjoining the rancho, but I lived for a long time at San José and have frequently visited the ranch.

23d. Cannot you say who it was that first informed you that those were the boundaries?

Ans. Nobody told me; I knew that the owners of the rancho always kept their cattle within those limits.

24th. Prior to fourteen or fifteen years ago, how often were you in the habit of going through that valley?

Ans. I cannot say it was very often.

25th. Are you the same José Fernandez who has heretofore been examined in the New Almaden case?

(Objected to by counsel for the claimant as irrelevant, not responsive to the examination-in-chief and impertinent.)

Ans. I am.

177 *Direct examination resumed.*

Questions by counsel for cl't:

Ques. 26th. Have you ever attended any *rodeo* on the Tularcitos rancho prior to the 7th July, 1846?

(Objected to by counsel for U. S. because proof of rodeo boundaries is not admissible, juridical possession having been given.)

Ans. I was present at rodeos at different times before the American invasion. I was not there frequently.

27th. State whether or not the boundaries you have described on the side of the Calaveras valley were generally recognized by the adjoining land-owners (colindantes) as the boundaries of the Tularcitos ranch?

(Objected to by counsel for the U. S. as incompetent.)

Ans. There were no colindantes on the north and east of the rancho.

178 José Alviso was on the south. I have never heard of any dispute about those boundaries.

28. State whether or not, when you attended the rodeos on that ranch, the boundaries you have described were generally recognized as the *rodeo* boundaries of the ranch?

(Objected to by counsel for the U. S. as incompetent.)

Ans. They were generally recognized as the rodeo limits of the land.

29. Where were the rodeos held which you attended?

Ans. They were sometimes held in the plain between the hills and the arroyo Penetencia, and sometimes in the Calaveras valley.

Cross-examination resumed.

Questions by counsel for the U. S:

179 30. Don't you think the *rodeos* were much oftener held in the Calaveras valley than in the plain below?

Ans. I don't remember exactly, but I think they were held as often in one as in the other.

31. Can you name any *colindantes* that you recollect seeing at any *rodeo* in the Calaveras valley? if so, state who, and where their land is situated.

Ans. Yes, I can name some, José Maria Alviso, the Berreyesas, and some more that I do not now remember. Alviso's rancho was to the south of the Tularcitos ranch, and Berreyesa's ranch was to the south of that.

JOSÉ FERNANDEZ.

Sworn to and subscribed this third October, 1860, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed October 3d, 1860.

W. H. CHEVERS, *Clerk.*

1123

180 *Additional exceptions on part of claimants.*

In the district court of the United States for the northern district of California.

THE UNITED STATES, *v.* THE HEIRS OF JOSÉ HIGUERA, deceased. } "Los Tularcitos."—On survey and location of the said ranch.

In addition to the exceptions heretofore filed in the above-entitled cause, the claimants herein, by their attorneys, Thompson, Irving & Pate, except further to the said survey and location made and approved by the surveyor general of the U. S., a copy of which is on file in the said court, in this:

That the northerly line of the said survey should be extended from the "*lone tree*," marked and adopted in said survey as the northeast corner of said tract of land to a point situated a short distance north and east of the plain or valley of "Calaveras," known as the "Piedra Azul," a naked landmark long known and recognized as the northeast corner of the said rancho, and

181 from thence by a line or lines southerly along the foot-hills of the sierra east of the said Calaveras valley, and by the point of termination of a line drawn six thousand and fifty varas east from the tree near the Tularcitos lake where the judicial measurement is shown by the testimony to have commenced, to a point known as "Los Bueyes," lying south or southeast of the southern extremity of the Calaveras valley; thence by a line due west until it intersects the Arroyo de los Coches; thence with said arroyo and bordering thereon to the point where said arroyo terminates in the plain, as laid down on said survey or plat; thence by a line due west to the Arroyo de la *Penetencia*.

Endorsed: Filed October 5, 1860.

W. H. CHEVERS, *Clerk.*

Deposition of J. A. Alviso.

182 District court of the United States, northern district of California.

SAN FRANCISCO, *November* 10, 1860.

THE UNITED STATES, *vs.* HEIRS OF JOSÉ HIGUERA. }

On this day before me, William H. Chevers, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came José Antonio Alviso, a witness produced on behalf of the claimant in case No. 228, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 148, on the docket of the said board of commissioners, and was duly sworn and testified as follows, his evidence being interpreted by a sworn interpreter, to wit: by William F. Nye.

Present: R. Aug. Thompson, esq., of counsel for claimant, and Calhoun Benham, esq., U. S. att'y for the U. S.

183 Question 1st, by counsel for claimant: Are you the same José Alviso who gave your testimony in this case on the 13th June last?

Ans. I am.

2d. On your cross-examination in that deposition you stated that the officer who gave the juridicial possession started from the tree therein described as standing near the road in the Tularcitos valley, and went to the foot of the sierra on the other side of the Calaveras, and then from the *Sierra Azul* they run a line south to Los Bueyes, &c. State now what is the object there spoken of as the Sierra Azul.

(Question objected to by counsel for the U. S., because it is not competent for the claimant to question the statement of his own witness made on a previous examination; the witness at the time not having desired to make any correction, nor does it appear that he now desires to make it of his own motion.)

184 Ans. It was not a *sierra* but a *piedra*, (rock.)

3d. Did you, in the answer above referred to in your former deposition, use the words "Sierra Azul" or "Piedra Azul?"

(Question objected to by counsel for the U. S. as leading, and because it is not competent for the witness to contradict his former statement made under oath, and taken down by the commissioner, as rendered by the interpreter, in the presence of counsel for the claimant.)

Ans. I used the words "*Piedra Azul.*"

4th. Describe the object which you designate by the words "Piedra Azul?"

Ans. It is a blue rock, which constitutes a point on the brow of the hill.

5th. Is that a naked and well known object?

185 Ans. It is.

6th. In what direction from the Calaveras valley, and on which side of the Calaveras creek, is it situated?

Ans. It is in a northerly direction of the Calaveras valley and to the north of the arroyo Calaveras.

7th. What distance is the Piedra Azul from the Calaveras creek?

Ans. I never measured it. It is about five hundred yards, to speak within bounds.

Cross-examination.

Questions by counsel for the U. S.:

8th. How long was it, after the taking of the deposition referred to, that you spoke of this error, and to whom did you first mention it?

186 Ans. I have no recollection of the time I spoke of it after the deposition was taken; but I spoke of it in the same court where the deposition was taken.

9th. Do you mean by this that on that examination you said "Piedra Azul" instead of "Sierra Azul," or that you noticed the mistake, as you now say it is, of the commissioner, and requested its correction at the time?

Ans. I recollect positively that I said "Piedra Azul" on my examination, and not "Sierra Azul." I did not know at the time that the mistake was made.

10. Do you recollect whether the interpreter gave your answer to the commissioner as "Piedra Azul" or "Sierra Azul?"

Ans. I do not recollect.

11th. Then you are unable to state whether the interpreter gave your

187 answer properly to the commissioner or whether the latter made an error in writing it down?

Ans. I know nothing about it.

12th. When did you first learn that your answer had been written "Sierra Azul" instead of "Piedra Azul," and how?

Ans. I never knew it before to-day. I know it now for the first time.

13th. I understand, then, that you have had no conversation with any one on this subject from the 13th June, when your former deposition was taken, until this morning, when the question was asked you on your direct examination respecting the substitution of "piedra" for "sierra?"

Ans. No, sir.

14th. Do you know José Fernandez, who lives in Santa Clara county; and

if so, have you had any conversation with him since the 3d of October last?

188 Ans. I know him. He lives in Santa Clara county. I have not had any conversation with him since the 3d of October.

his
JOSÉ ANTO. + ALVISO.
mark

Sworn to and subscribed before me this 10th November, 1860.

W. H. CHEVERS, *U. S. Comm'r.*

It is hereby stipulated and agreed that the foregoing deposition may be read in evidence, the same as if taken under regular notice from the commissioner.

R. AUG. TMOMPSON,
Att'y for Claimants.
CALHOUN BENHAM,
U. S. Att'y.
By JNO. B. WILLIAMS,
Asso. Counsel.

Endorsed: Filed November 10th, 1860.

W. H. CHEVERS, *Clerk.*

189 *Deposition of F. Higuera.*

District court of the United States, northern district of California.

SAN FRANCISCO, *November* 10, 1862.

THE UNITED STATES
vs.
HEIRS OF JOSÉ HIGUERA.

On this day before me, William H. Chevers, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Fulgencia Higuera, a witness produced on behalf of the claimant in case No. 228, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 148, on the docket of the said board of commissioners; and was duly sworn, and testified as follows, his evidence being interpreted by a sworn interpreter, to wit: by William F. Nipe.

Present: R. Aug. Thompson, esq., of counsel for claimant, and Calhoun Benham, esq., U. S. att'y for the U. S.

190 Question 1st. by counsel for claimant. What is your name, age, and place of residence?

Ans. Fulgencia Higuera, 53 years of age, and I live on the rancho Agua Caliente, Alameda county.

2d. Are you a son of José Higuera, the grantee in this claim, and have you any interest in the result of this case?

Ans. I am a son of José Higuera. I formally had an interest in this case, but have since parted with it. The parties to whom I sold have no right of reclamation on me.

3d. Do you know the rancho Tularcitos, claimed in this case? If so, how long have you known it?

Ans. I have known the ranch, more or less, 36 years.

4th. Do you know the boundaries of the ranch as they were known prior to the occupation of the country by the Americans? If so, describe them.

191 (Question objected to by counsel for the U. S., because the act of juridical possession shows the boundaries given.)

Ans. I do know the boundaries. They are on the north by the Arroyo Ca-

lera; a line runs from the Arroyo Calera to the hills; the Arroyo Calera loses itself in the high hills; thence in a straight line to the Encinito, and from there in a straight line to the Piedra Azul; from thence it runs along a range of hills to a high hill where there is a baranca or slide; from thence in a straight line to a chemisal lito on the side of the hill next the Calaveras, on the Los Bueyes rancho; from thence in a straight line to the Monte de los Coches.

5th. On which side of the Calaveras valley is the baranca of which you spake, situated?

Ans. On the side of the sausales towards the sierra.

192 6th. What distance is the baranca above the Calaveras valley?

Ans. More or less, a mile and a half.

7th. By what object is the point called Encinito known?

Ans. It is a high hill with a single tree on it and chemisal around it.

8th. Who has occupied the Calaveras valley from the time you first knew the rancho until the Americans took possession of the country?

Ans. My father occupied it with his cattle up to the time the Americans came, at which time he had about 2,000 head of cattle there.

9th. Were there any houses, corrals, or other buildings in the Calaveras valley prior to the occupation by the Americans?

Ans. My father built a corral there, and two houses, which were after-

193 wards burned; then my brother Mariano built an adobe house there, which is still standing. This was before the Americans came—about twenty years ago.

10th. Who occupied the house built by your brother Mariano during that time?

Ans. It was occupied by my brother and myself who acted as vaqueros for my father. After the death of my father it was occupied by a brother-in-law of Mariano who acted as a mayor domo for my brother Mariano. He also cultivated considerable land in the valley, with corn, wheat, potatoes, &c.

Cross-examination.

Questions by counsel for the U. S.:

Ques. 11th. In your answer to ques. 4th you spake what you consider the boundaries to be. From what is your information derived?

194 Ans. My father pointed them out to me.

12th. How long have you known the place Los Bueyes by that name?

Ans. About thirty years.

13th. How long have you known the place called Piedra Azul by that name?

Ans. Ever since I was a boy; from the time I first went to the Calaveras valley.

14th. Do you recollect the fact of juridical possession being given to your father?

Ans. I do.

15th. At the time this juridical possession was given, were not the places, Los Bueyes and Piedra Azul known by those names to all the residents of the country?

Ans. They were.

195 16th. At the time the Americans took possession of the country, state who were the colindantes of the Tularcitos ranch on the north, east, and west, and south.

Ans. I was a colindante on the north, on the side next to the mountains; it was public land; José Maria Alviso on the south, and Ignacio Alviso on the side next the Penetencia.

1427

Direct-resumed.

Questions by counsel for claimant:

Ques. 17. What is the name of your rancho that you say adjoins the Tularcitos on the north?

Ans. The rancho Agua Caliente.

his
FULGENCIA + HIGUERA.
mark.

Sworn to and subscribed this 10th November, 1860.

W. H. CHEVERS,
U. S. Comm'r.

196 It is hereby stipulated and agreed that the foregoing deposition may be read in evidence, the same as if taken under regular notice from the commissioner.

THOMPSON, IRVING & PATE,
Attorneys for Claimants.
CALHOUN BENHAM,
U. S. Att'y.
By JNO. B. WILLIAMS,
Asso. Counsel.

Endorsed: Filed November 10, 1860.

W. H. CHEVERS, *Clerk.*

197 *Deposition of J. Romero.*

In the district court of the United States for the northern district of California.

THE UNITED STATES, *vs.* HEIRS OF JOSÉ HIGUERA. } In land cases.—Dist. court No. 228.—Land com. No. 148.

Be it remembered that on this 28th day of November, A. D. 1860, at San Francisco, in the district aforesaid, before me, John B. Williams, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared José Romero, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being interpeted by R.
198 Tobin, esq., and notice waived.

Present: Calhoun Benham, esq., U. S. att'y; R. A. Thompson, esq., for claimant.

Questions in behalf of the United States.

Question 1st. State your name, age, and residence?

Ans. José Romero, age 60, residence Agua Caliente, Alameda co.

2d. Do you know the rancho Los Tularcitos, in Santa Clara county; and if yea, how long have you known it?

Ans. I have known it since 1828.

3d. Do you know its boundaries, and if so, state how you know them?

Ans. I don't know the boundaries; I only know the part of the rancho where the house is, and the laguna of the Tularcitos.

199 4th. Did you know José Higuera in his lifetime; and if so, what land did he occupy for a rancho?

Ans. He occupied the old house below the road, and afterwards they built a new house near the laguna—the lands known by the name of Laguna de los Tularcitos.

5th. Cannot you describe those lands by any landmarks?

Ans. I know that there was some measurements there; there is a tree near the Tularcitos which was marked, and I can state the measurements from that. I did'nt see the measurement, but I know from the owner that he owned so many varas in each direction from that tree.

6th. Do you know a tree surrounded by chemisal, which can be seen from the plain to the east of Higuera's house at the Arroyo Calera?

Ans. I do.

200 7th. In a southerly direction from that tree, do you know a high peak which can also be seen from the plain; and if so, state its name.

Ans. I do. It is called the Cerito de las Calaveras.

8th. How did the peak get that name?

Ans. Because when it was first discovered by the first inhabitants, it was recognized and known as a place where the Indians used to worship, and where they kept their idols. Some remains of idols were found there.

9th. Can you recollect how long that peak has been known by the name of Cerito de las Calaveras to the old inhabitants of the country?

Ans. It has been known by that name as long as I can remember. I was born in the pueblo of San José, and have lived there most of the time.

201 10th. Do you know the valley west of that peak, and between that peak and the plain?

Ans. To the east of that peak is the plain de la Calaveras; to the west of it is the little valley where the house was.

11th. In this valley, to the west of the Cerito de las Calaveras, do you or not remember a "posa" and "sausal;" and if so, state where in that valley they are situated?

Ans. Yes, they are adjoining each other. I have known a "saucelite" there. I never knew a posa there, but a laguna—one is on one side, and one on the other; the sausalita was near the laguna.

12th. Do you know of any "posa" in the plain de los Calaberas?

Ans. No, sir. What I call a posa is a hole dug in the ground.

Cross-examination.

202 13th. Do you know the plain of Calaveras, and if so, how long?

Ans. As long as I can remember, I have known it.

14th. By whom was that plain first occupied?

Ans. By the pueblo.

15th. Was it occupied by anybody else beside the pueblo?

Ans. It was occupied by the pueblo exclusively while they did occupy it.

16th. When did the pueblo cease to occupy it?

Ans. I don't know; it was occupied by the pueblo whenever they needed pasture ground.

17th. Who occupied it after pueblo?

Ans. The Higueras.

18th. When did the Higueras first occupy it?

203 Ans. I can't tell; had no interest in the matter.

19th. You stated that you have known the rancho Tularcitos since 1828. In 1828 who occupied the Calaveras valley?

20th. The Higueras occupied it, but I dont know under what right.

21st. Did you ever attend any rodeos on the rancho Tularcitos?

(Objected to as new matter.)
Ans. I did sometimes.
22d. Where were the rodeos held which you attended?
Ans. In the Calaveras plain.
Examination closed.

his
JOSÉ + ROMERO.
mark.

Sworn to and mark made before me this 28th day of November, A. D. 1860.
JNO. B. WILLIAMS,
U. S Att'y.

Endorsed: Filed December 3rd, 1860.
W. H. CHEVERS, *Clerk.*

204 *Deposition of A. Ruis.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *vs.* HEIRS OF JOSÉ HIGUERA. } In land cases.—Dis't court No. 228.—Land com. No. 148.

Be it remembered that on this 28th day of November, A. D. 1860, at San Francisco, in the district aforesaid, before me, John B. Williams, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Agatin Ruis, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being interpreted by R. Tobin,
205 duly sworn and notice waived.

Present: C. Benham, esq., U. S. att'y; R. A. Thompson, esq., for claimant.

Questions in behalf of the United States:

Question 1st. State your name, age, and residence?

Ans. Agatin Ruis, age 49, residence at the mission of San José.

2d. Do you know the rancho Los Tularcitos in Santa Clara county; and if so, how long, and in what manner?

Ans. I came to that rancho from Los Angeles in 1831. In 1832, I took charge of it for the deceased, José Higuera, because my father had some cattle there also.

3d. Did Josè Higuera ever point out to you the boundaries of his rancho; and if so what?

206 Ans. He showed them to me when I was at the rancho, El Chemisal Prieto, the Calaveras peak (*picacho.*) On the peak he had a piece of iron with some lettering on it, and towards the south at a place where there was a spring, above the Monte de las Coches where there is now a squatter, he had a similar piece of iron with lettering also. The other two boundaries are below—one at the Penetencia and the other at the Esteritas.

4th. You have mentioned the Calaveras peak, please describe its situation relative to the Tularcitos and the Plane de la Calaberas?

Ans. It is between those two places.

5th. In which side of that peak was the iron stake driven—in the side next the Calaveras valley or the side next the Tularcitos?

Ans. Near the top of the peak, slightly to one side, on the side of the plain.

6th. From the plain towards the Penetencia can that peak be
207 plainly seen?

Ans. It can, well.

7th. And also the tree at the chemisal?

Ans. It can also.

8th. When you were in charge of the Tularcitos ranch did any one claim the plain of the Calaveras under any grant?

(Objected to as irrelevant.)

Ans. The plain belonged to the pueblo, but the deceased José Higuera got permission from the alcalde of the pueblo to let his cattle run there with those of the pueblo.

(Answer objected to.)

9th. Did or did not the cattle of the colindantes also run there in the same manner as those of Higuera?

(Objected to as leading.)

208 Ans. They all went there, there was no fence.

10th. Do you know of any rodeos having been held in that valley to separate the cattle of the colindantes from each others and from those of the pueblo?

Ans. José Higuera held his rodeos in the plain of the Calaveras, to separate his cattle from those of the colindantes, and the neighbors came there to take them away.

11th. Can you name some of those colindantes?

Ans. I cant remember, it is so long ago.

12th. When did you leave the Rancho Las Tularcitos?

Ans. I dont remember when I left, I was working there nine years.

13th. Did you during all these nine years understand the boundaries
209 of the Tularcitos ranch as you have before stated them as having been pointed out to you by the dec'd José Higuera?

Ans. I did.

Cross-examination.

14th. Are you the same Agutin Ruis who gave testimony in this case before, in June 1858, before a notary?

Ans. I am.

15th. Do you recollect how old you stated yourself at that time?

Ans. I stated to them my age at that time.

16th. Did you not then state that your age was 51 years?

Ans. I did not.

17th. What relation are you to the deceased José Higuera?

210 Ans. He and my mother were first cousins.

18th. Why then did you state all through that deposition that José Higuera was your uncle?

Ans. I call him uncle because he is the first cousin of my mother. My father recommended me to him as a son. According to our system we sometimes call our uncle grandfather, and sometimes papa.

19th. Were the boundaries of the Tularcitos ranch, as described by you in that deposition, the boundaries pointed out to you by the dec'd José Higuera?

Ans. They were.

20th. Were you not, at the time you gave that deposition, occupying lands as a squatter lying within the boundaries of the Tularcitos ranch, as now claimed by the Higueras?

(Objected to because it does not appear that the witness knows the
211 present claim of those who now own the Tularcitos.)

Ans. I did so occupy lands, but they were outside of their limits.

21st. Did not the claimants claim that they were inside of their limits.

Ans. I don't know what they did—they never told me so.

22d. How far were the lands occupied by you from the Arroyo de los Coches?

Ans. Some 200 or 300 varas, perhaps a little more.

23d. On which side of the Arroyo de los Coches were those lands situated which you occupied, north or south?

Ans. South of the arroyo.

24th. Was the land which you occupied on the side of the Arroyo los Coches next to the chemisal prieto, or on the opposite side?

212 Ans. The chemisal prieto and the land I occupied were both on the same side.

25th. Were the lands you occupied between the peak of Calaveras and the Arroyo los Coches?

Ans. No, sir, they are not; the cerito is up in the hills; my land is down low, on one side.

26th. Were the lands you occupied between the Calaveras valley and the Arroyo de los Coches?

Ans. It was not between them, but at the end.

27th. Would the boundaries as you have described them in your deposition of to-day include the land you occupied?

Ans. The land would be outside.

28th. Which side of the Arroyo los Coches was situated the house in which you lived, to your right hand or left going down the creek?

213 Ans. On the right hand.

29th. You stated that the boundaries, as described in your former deposition, were the same that were pointed out to you by José Higuera. How does it happen that in that deposition you said nothing about the Calaveras peak?

Ans. Because I was not asked anything about it; I was going to make this remark a little while ago.

30th. How does it happen that you mentioned the Calaveras peak in your deposition of to-day, without being asked anything about it?

Ans. I was asked about the boundaries to-day, and also about the peak.

31st. How does it happen that you recollect to-day two iron monuments, whereas, in your former deposition, you only spoke of one?

214 Ans. I don't remember very well, but I think I must have mentioned two in my former deposition, as well as to-day; José Higuera himself showed them to me.

32d. How far is the Calaveras peak from the Tularcitos valley?

Ans. I can't tell; I never *mentioned* it.

33d. Is it a league?

Ans. Can't say.

34th. Half a league?

Ans. I am unable to say.

35th. Is the peak of Calaveras in the same direction from the chemisal prieto as the Tularcitos valley?

Ans. It is not.

36th. Why then, in your deposition two years ago, did you state that the second line of the rancho was from the chemisal prieto to the Tularcitos?

215 Ans. I did not say so. I stated then that the line on that side is as I have now stated.

37th. When did Higuera point out those boundaries to you?

Ans. I don't remember in what year. I was there 9 years from 1832. It was during that time.

38th. How do you know that Higuera got permission from the alcalde to occupy the plain of Calaveras?

Ans. Because the *regidor* of the ayuntamiento came to the rancho and told

my uncle José to withdraw his cattle from there, as the people of the pueblo wanted to put their cattle there. My uncle said to the regidor that he couldn't do it, it would be no use—they would go back if he did take them away. I think it was two or three years after I went there.

39th. Who was the regidor?

216 Ans. I don't remember, it is so long ago.

40th. Who was the alcalde of the pueblo in 1832–3, 4, 5?

Ans. I don't recollect.

Examination closed.

AGATIN RUIS.

Sworn to and subscribed before me this 28th day of Nov., A. D. 1860.

JNO. B. WILLIAMS.
U. S. Com'r.

Endorsed: Filed December 3, 1860.

W. H. CHEVERS, *Clerk.*

217 *Deposition of F. Alviso.*

In the district court of the United States for the northern district of California.—
In land cases.

THE UNITED STATES
vs.
HEIRS OF JOSÉ HIGUERA. } Dist. court, No. 228.—Land com. No. 148.

Be it remembered, that on this 28th day of November, A. D. 1860, at San Francisco, in the district aforesaid, before me, John B. Williams, a commissioner duly appointed by the circuit court of the United States for the districts of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Francisco Alviso, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows; his evidence being interpreted by R. Tobin, esq.,

218 duly sworn and notice waived.

Present: Calhoun Benham, esq., U. S. attorney; R. A. Thompson esq., for claimant.

Questions in behalf of the United States:

Question 1st. State your name, age, and residence?

Ans. Francisco Alviso; age 66; residence Contra Costa county.

2d. Do you know the Rancho los Tularcitos in Santa Clara county, and if so, how long have you known it?

Ans. I have known it since 1815.

3d. Did you know José Higuera, the grantee, in his lifetime?

Ans. I did.

4th. Did or did not José Higuera point out to you the boundaries of his rancho?

Ans. He did.

219 5th. Describe the boundaries he pointed out to you?

Ans. The Tularcitos, where he built his first house, and oak tree in the chemisal—the Calaveras peak and the Rancho de las Coches.

6th. On which side of the rancho was the oak tree situated?

Ans. On the north.

7th. On which side of the Calaveras peak?

Ans. I don't know the points of the compass, but nearly in the same direction as the oak tree.

8th. Is or not the rancho las Coches in the same direction from the oak tree as the peak of the Calaveras?

Ans. The las Coches is to the south.

9th. Standing at the las Coches and looking towards the oak tree, is or is not the peak of the Calaveras nearly in line?

220 Ans. I never looked that way to see.

10th. How long has the peak of the Calaveras been known by that name?

Ans. I have known it by that name since 1815. I was first there in that year.

11th. Standing on that peak, was or was not Higuera's land between that and the bay?

Ans. It would be on one side.

12th. Did you ever hear the Tularcitos, where Higuera built his first house, called by any other name?

Ans. Never.

13th. Do you know the Calaveras valley?

Ans. I do.

221 14th. Was that valley included within the boundaries pointed out to you by Higuera?

(Objected to as leading.)

Ans. No, it was not.

15th. Is not the peak of the Calaveras between the Tularcitos valley and the Calaveras valley?

(Same objection.)

Answer. It is.

16th. And is not that peak also between the Monte los Cochas and the oak tree in the chemisal?

(Objected to.)

Answer. It is.

17th. Do you know of any *posa* or sausal in the Tularcitos valley?

Ans. There is the laguna and a little spring of water at the foot of a tree. There were some scattering willows there.

222 18th. Do you know of any posa in the Calaveras valley?

Ans. No, there were springs of water there—no posa.

19th. Who was José Higuera's colindante on the north?

Ans. From the little oak tree before mentioned the land belonged to the mission.

20th. Where was the rancho Agua Caliente with reference to the Tularcitos ranch?

Ans. On the north.

21st. Was or was not the line of the aqua Caliente and that of the Tularcitos the same?

Ans. They adjoined each other. The oak tree of which I have spoken and another one below marked the boundary of the two ranchos.

Cross-examination.

223 22d. When did José Higuera point out the boundaries of the Tularcitos to you?

Ans. I don't remember when, it was a great many years ago.

23d. Was it before or after the juridical measurement?

Ans. I can't say.

24th. Did you know of any juridical measurement of the boundaries of Tularcitos?

Ans. No, sir.

25th. Did you ever hear of any?

Ans. No. sir.

26th. Did you never hear that Louis Peralta had given juridical possession?

Ans. No, sir.

27th. Who was present when José Higuera pointed out the boundaries?

Ans. We were alone in conversation together.

224 28th. Where did that conversation occur?

Ans. At the mission of San José.

29th. State the language used by him when he told you those were the boundaries?

Ans. He told me "I have the place" bounded as I have stated.

30th. State what those boundaries were.

Ans. The Encinito, las Coches, and the Calaveras peak *(picacho.)*

31st. Do you know the Arroyo de la Calaveras?

Ans. They call Calaveras anywhere about there—the proper place known by that name is the peak. I suppose it is the stream which runs through the plain of Calaveras.

32d. Were you often on that rancho during Higuera's lifetime, and prior

225 to the coming of the Americans.

Ans. I was.

33d. How often?

Ans. A great many times.

34. Who first occupied the plain of the Calaveras after the pueblo?

Ans. The deceased Higuera.

35. Who continued to occupy it until after the Americans came there?

Ans. I believe the Higueras did. I moved away afterwards and don't know what happened.

36. Was there, prior to the American occupation, any houses or corrals in the Calaveras valley?

Ans. Many years before that there was a house there and a little corral, the house was abandoned. I afterwards moved to Monterey, and don't know what occurred there after that.

226 37th. In what year did you go to Monterey?

Ans. I don't remember.

38. How long before the Americans came?

Ans. I don't know.

39th. Don't you know that that house and corral were built by the Higueras and occupied by their vaqueros or *mayor domo?*

Ans. Valentine Higuera built the house.

40. How do you know is was abandoned?

Ans. Because they left it there uninhabited, and came off to the rancho on this side.

41. Don't you know that after that it was occupied by the vaqueros of the Higueras; and that Mariano Higuera afterwards lived there?

227 Ans. I do not know.

42d. Did you ever know of any other person except the Higueras claiming or occupying the Calaveras valley after the pueblo, and prior to the coming of the Americans?

(Objected to, because the witness has not said that the Higueras claimed there.)

Ans. I don't know.

43d. Did you ever attend any *rodeos* there?

Ans. Yes.

44. Where were they held?

Ans. In the Calaveras plain.

45. At what time?

Ans. Until I moved away from there.

46. Who made those rodeos.

Ans. Mariano and Valentine Higuera.

228 47. Did you ever know of any other person except the Higueras holding *rodeos* in the Calaveras valley, prior to the American occupation?

Ans. No, sir.

48. Were those *rodeos* held there before or after the death of José Higuera, the father?

Ans. Before.

49th. Whose cattle were assembled at those *rodeos?*

Ans. The cattle of all the neighbors. There was the cattle of José, Mariano and Valentine Higuera, and of the deceased José Alviso, and others.

50th. Were not the cattle of Alviso and other neighbors which were collected at those rodeos, those which had strayed and got mixed with the cattle of the Higueras?

229 Ans. Yes, they mixed together.

Examination closed.

his
FRANCISCO + ALVISO.
mark.

Sworn to, and mark made before me, this 28th day of November, A. D. 1860.

JNO. B. WILLIAMS,
U. S. Comm'r.

Endorsed: Filed Dec. 3d, 1860.

W. H. CHEVERS, *Clerk.*

Deposition of E. Twitchell.

230 District court of the United States, northern district of California,

SAN FRANCISCO, *April 14th*, 1860.

THE UNITED STATES, }
vs.
HEIRS OF JOSE HIGUERA. }

On this day, before me, William H. Chevers, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Edward Twitchell, a witness, produced on behalf of the claimants in case No. 228, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 148 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present: R. Aug. Thompson, esq., counsel for the claimants; Tally R. Wise, esq., acting U. S. att'y for the U. S.

Question 1st, by counsel for the claimants. What is your name, age, place of residence, and occupation?

231 Ans. My name is Edward Twitchell; I am 31 years of age; I reside in Sacramento; and I am a surveyor.

2d. Have you ever acted as deputy surveyor of the U. S. surveyor general for California, and if yea, did you ever make the survey of the rancho "Los Tularcitos," claimed by the heirs of José Higuera in this case?

Ans. I have acted as such deputy, and I made a survey of the said rancho in the fall of 1857.

3d. Look at the official copy of the map of said rancho filed in this case, and state whether it is a copy of the final survey as made by you, under the instructions of the surveyor general?

Ans. I think it is.

4th. Look at the point marked "laguna" on said map, and state what it represents?

232 Ans. It represents a small pond, situated in the Tularcitos valley, and it was pointed out to me by members of the Higuera family as the "Tularcitos."

5th. Describe, if you can, the country adjacent to the said laguna, or pond, and what prominent objects, natural or otherwise, you found in its vicinity when you made such survey.

Ans. There is a range of hills running along bearing about southeast in a general course which bounds the Tularcitos valley on the northeast. There are several small springs to the south and west of the Tularcitos lake, which are tributaries of the "Arroyo de las Coches." There were three or four adobe buildings within a short distance of the Tularcitos lake.

6th. State the extent of the Tularcitos valley, within the boundaries as contained on that map.

Ans. I should think that there was about a mile in length from north-

233 east to southwest, and perhaps a half or three quarters of a mile in width.

7th. State whether the map as now filed in this case represents the said survey as originally made by you or not.

Ans. It does not.

8th. State why it was changed from its original location as made by you to its present form.

Ans. The change was made under instructions from the surveyor general.

9th. Describe the difference between the location as originally made by you and the one represented on the official map.

Ans. In the original survey the line from the "lone tree" on the said official map was run due east to the summit of the ridge on the east side of the Cala-

veras valley; thence in a southeasterly direction along said ridge to a

234 point that would intersect a line due east from a point on the hills, about one mile east of Alviso's house; thence west to said last point on the hills east of Alviso's house. The remaining lines of the survey correspond with the official map as now on file.

10th. Please mark on the chart now shown you, marked "Exhibit No. 1, to the deposition of James T. Stratton," the difference between said surveys as described in your last answer.

Ans. I have marked the said lines in green crayon as near as I can recollect without having the field-notes to refer to.

11th. Look at said Exhibit No. 1, &c., and mark in green the point marked laguna on the official map as described in your answer to question 4th.

Ans. I have marked it by writing the word "Tularcitos" in green.

235 12th. State whether in making said official survey any reference was had by you to the original juridical possession given by Luis Peralta to José Higuera on the 23d of October, 1831.

(Objected to by counsel for the U. S. as leading, and because it has not been shown to what papers the instructions referred, under which the witness made the survey.

Ans. Yes, sir. I had a copy of the diseño and the testimony taken before the board of land commissioners. I will not be certain that I had a copy of the juridical measurement, but I know that I had the courses and distances run by Luis Peralta, as described in the record of the juridical possession.

13th. Did you or did you not ascertain the point from which the said Luis Peralta commenced his juridical measurement?

Ans. I did not ascertain the exact point. I took the Tularcitos

236 lake as a point, and ascertained from that point how far the six thousand and fifty varas would reach.

14th. Please mark on said Exhibit No. 1 the point where a line drawn due east from the Tularcitos lake, as you have designated it on said exhibit, six thousand and fifty varas in length would terminate.

Ans. It would terminate at a point due east of said Laguna in the green line, delineated by me as the eastern line of the survey as I originally made it.

15th. State whether you are acquainted with the locality marked on said Exhibit No. 1 thus: [Tularcitos]—[Viña].

Ans. I have seen the pond laid down there. I remember the country in its vicinity.

16th. Please describe the locality and any prominent objects, natural or artificial, in its vicinity.

237 Ans. The pond is situated in the hills, a short distance from the main valley or plain on the western part of the map. It is no valley of any size, and surrounded by hills. I don't remember any natural or artificial objects around there.

17th. Did you or did you not observe in that locality any signs or evidences of cultivation or building, or of there having ever been any settlement there?

Ans. I don't remember any.

18th. Is there or is there not any level land fit for cultivation between the northwestern end of the pond and the southeastern end of the place marked thus: [Tularcitos]?

Ans. There may be a few acres.

19th. What is the character of the hills which surround that locality?

Ans. They are quite abrupt, not suited to cultivation.

238 20th. State why you changed the direction of the southern line of the survey from a northeasterly to a due east course at a point one mile due east of Alviso's house, as shown by the green line made by you on Exhibit No. 1.

Ans. Because the northeasterly line would have excluded a large portion of the original grant described as extending six thousand and fifty varas east from the Tularcitos lake, as contained in the juridical possession.

21st. Look at the diseño contained in the transcript filed in this case, and state whether you know the point designated thereon as "Estero;" and if so, please mark on said Exhibit No. 1, as nearly as you can, its true position.

Ans. I could not correctly designate its position.

22d. Look at the said diseño referred to in the last question, and state,

239 from your knowledge of *of* the country, what the curved line running from south to north along the base of the extreme eastern range of hills is intended to represent.

Ans. I suppose it was intended to represent a creek that flows through the Calaveras valley.

Cross-examination.—Questions by counsel for U. S.

23d. In your answer to question 2d you state that you made a survey of the ranch claimed in this case in the fall of 1857. Do I understand from your direct examination that you made two surveys of this tract as deputy surveyor, the second one of which is shown by the certified copy-plat filed in the case by the surveyor general; and if so, what became of your first survey?

Ans. I did not make two entire surveys. The last one I made was

240 made as a correction of the first one, under the direction of the surveyor general. With the consent of the surveyor general, I withdrew the first map and field-notes, made the necessary change in the map, and substituted new field-notes, and returned them to the surveyor general's office.

24th. State the cause that induced you to obtain permission from the surveyor general to withdraw the first plat and field-notes, and why was the change necessary?

Ans. Because he had decided that the boundary lines, as surveyed by me, were not correct.

25th. Then the permission to withdraw the first map and field-notes was, in other words, a disapproval or rejection of your first survey by the surveyor general as not having been made by you in accordance with the instructions which he had given you?

241 (Question objected to as an inference from the testimony, and not a question.)

Ans. The first survey was disapproved by the surveyor general; with his permission I withdrew the map and field-notes in order to prepare a new one, in accordance with his decision.

26th. When you made the second survey, did you carry with you any different or additional written instructions from those which you had when you made the first survey? And if so, state them.

Ans. I received no additional written instructions. The surveyor general gave me verbal instructions as to the change he would require to be made in the first survey.

27th. In giving those verbal instructions, did the surveyor general give them to you as additional or conflicting with the first set, or in the nature of his understanding of the first instructions, and in explanation thereof?

242 (Question objected to, because the original instructions themselves should be produced, and the fact whether the second survey was in accordance or in conflict with them, is for the court to judge.)

Ans. I think they were given in explanation.

28th. Was it your understanding, at the time you received those verbal instructions, that the second survey was made necessary because you had misconstrued the written instructions, in the opinion of the surveyor general, and not because the surveyor general wished to alter or amend those written instructions?

(Question objected to, because the written instructions themselves should be produced, and oral testimony about them being inadmissible, and for the further reason that it calls upon the witness to give the motives and opinions

243 of the surveyor general, which he himself is the only proper person to testify in relation thereto.)

Counsel for the U. S. disclaims asking the witness as to the motives of the surveyor general, but only the witness's own understanding as expressed in the question.

Ans. I think it was because the surveyor general thought I had misconstrued them.

(Answer objected to by counsel for claimant, because the witness's supposition as to the reasons governing the surveyor general in ordering a new survey is not evidence, and for a further reason that if those reasons were known it would have nothing to do with the merits of the question.)

29th. State whether your field-notes of the first and second surveys were both filed by the surveyor general as from you officially, and if not,

244 which set you did file in the surveyor general's office.

Ans. I filed them both officially, but before filing the second set I withdrew the first, and retained them in my possession.

30th. In making your official survey of the rancho, state the data upon which it was made.

(Objected to, because the data is contained in the files of the surveyor general's office, and should be produced.)

Ans. It was made upon the instructions of the surveyor general and a copy of the diseño, also a copy of a portion of the testimony before the land commission.

(The answer objected to by counsel for claimant, on the same grounds as to the question.)

31st. In your answer to question 4th you state that the point marked
245 "laguna" on the official plat represents a small pond situated in the Tularcitos valley, state how acquired the information that that valley was called Tularcitos valley at the time the grant was made?

Ans. I assumed that to be the case, from the position of the point marked "Tularcitos" on the diseño.

32. State whether its relative position on the diseño to the house of Alviso and the houses of Higuera caused that assumption, or its relative position to other points marked on the diseño.

Ans. Its relative position to the houses of Higuera, and also the place marked "Calaveras" on the diseño.

33. How did you identify the place marked "Calaveras"—by its relative position to other objects on the diseño, or by natural objects shown on the diseño, and found by you on the ground?

246 Ans. By its relative position to other objects, and from the fact that the valley has been known as the Calaveras for some years past.

34. State whether the copy diseño which you had at the time agrees with the copy contained in the transcript on file in this case, and if so, whether you find on the latter, now shown you, certain natural objects in a place which is also marked "Calaveras," and if so, whether you discarded those natural objects in finding that place upon the ground, and identified the place by its relative position only.

Ans. I found no natural objects in the valley by which it could be identified. There were willows growing on the stream which might agree with the point marked "sausal" on the diseño. I arrived at the conclusion that it was the Calaveras valley from the range of mountains on the northeast
247 side of the place marked "Calaveras" on the diseño, and also a range of hills on the west side.

Examination is suspended until such time as it may be agreed upon by the counsel to continue it.

E. TWITCHELL.

Sworn to and subscribed this 14th day of April, 1860, before me.

W. H. CHEVERS, *U. S. Comm'r.*

Endorsed: Filed December 6th, 1860.

W. H. CHEVERS, *Clerk.*

248 *Deposition of F. Sanchez.*

In the district court of the United States for the northern district of California.—In land cases.

THE UNITED STATES
v.
HEIRS OF JOSÉ HIGUERA. } Dist. court No. 228.—Land com. No. 128.

Be it remembered that on this 28th day of November, A. D. 1860, at San Francisco, in the district aforesaid, before me, John B. Williams, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Francisco Sanchez, a witness produced in behalf of the claimants in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the state of California, who, being duly
249 sworn, testified as follows; interpreted by Wm. F. Nye, duly sworn, and notice waived by consent of parties:

Present: R. Aug. Tompson, esq., for claimant; Calhoun Benham, esq., for U. S.

Questions in behalf of the claimants.

Question 1st. State your name, age, residence, and occupation.

Ans. Francisco Sanchez; 55; county of San Mateo. I have no occupation; I live on my rancho, San Pedro.

2d. Do you know Agatin Ruis, who was examined to-day in this case?

Ans. I do; for more than thirty years.

3d. Have you had an opportunity of knowing his general reputation for truth and veracity in the community where he lives?

Ans. I have had the opportunity.

250 4th. What was that reputation, good or bad?

Ans. Bad.

5th. From that general reputation, would you believe him on oath?

Ans. I would not.

Cross-examination.

6th. What difficulty have you had with Ruis?

Ans. I have had none.

7th. In what places have you heard his reputation discussed, and when?

Ans. Here at San Francisco, and in San José, where he lived. I have heard of his reputation, ever since 1846, as not being that of an honest man. Since the time I have known him—for thirty years—I have never seen him behave like an honest citizen.

251 8th. Explain what you mean by not behaving like an honest citizen?

Ans. I never saw him established—he appeared to be a vagabond going from place to place.

9th. Do you mean by this, he has always been poor and therefore not to be believed like men who owned ranchos?

Ans. Not on that account—a poor man who is honest should be believed as well as a rich man. I judge from his actions.

10th. What actions do you mean?

Ans. He had no property, no means of living, he went about like a vagabond; a man of bad habits, of bad customs.

11th. And for these reasons you will not believe him on oath?

Ans. I would not.

Examination closed.

FRANCISCO SANCHEZ.

252 Sworn to and subscribed before me, this 28th day of November, A. D. 1860.

JNO. B. WILLIAMS, *U. S. Com'r.*

Endorsed: Filed December 6, 1860.

W. H. CHEVERS, *Clerk.*

Deposition of T. L. de la Rosa.

In the district court of the United States for the northern district of California—
In land cases.

THE UNITED STATES, } Dist. court, No. 228.
vs.
HEIRS JOSÉ HIGUERA, } Land com., No. 148.

Be it remembered that on this 28th day of November, A. D. 1860, at San Francisco, in the district aforesaid, before me, John B. Williams, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgements of bail and affidavits, and also
253 to take depositions of witnesses in civil causes depending in the courts of

the United States, pursuant to the acts of Congress in that behalf, personally appeared Tito Livio de la Rosa, a witness produced in behalf of the claimants in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified a follows; notice waived by consent of parties. Testimony interpreted by Wm. F. Nye, duly sworn.

Present: R. Aug. Thompson, esq., for claimants; Calhoun Benham, esq., U. S. att'y.

Questions in behalf of the claimants.

Question 1st. State your name, age, residence and occupation?

Ans. Tito Livio de la Rosa, age 36, residence Santa Clara co., occupation none, except to lend money.

254 2d. Do you know Agatin Ruis, who was examined to day in this case?

Ans. I do.

3d. How long have you known him?

Ans. About six or seven years.

4th. Have you had an opportunity of knowing his general reputation for truth and veracity in the community where he lives?

Ans. I have.

5th. Do you know what that reputation is, good or bad?

Ans. It is not good, as I have generally understood.

6th. From that general reputation would you believe him on oath?

Ans. I would not believe him.

Cross-examination.

255 7th. Do you live in the same community with Agatin Ruis?

Ans. I don't know where he lives at present, formerly I lived in the same community.

8th. Where was that, and for how long a time?

Ans. Ruis lived in different places in the same county with me, Santa Clara; I don't recollect how long a time, three or four years more or less, am not certain.

9th. How often did you see him during that time?

Ans. Very often?

10th. Did you ever have any business relations with him of any kind?

Ans. I have.

11th. What were they?

Ans. Buying animals and wood from Ruis.

256 12th. Did you ever have any difficulty with him with respect to these business transactions, or with respect to any other matters?

Ans. I have.

13th. State what those difficulties were?

Ans. He did not fulfil his engagements.

14th. How often did those difficulties occur between you?

Ans. Whenever we had business together, every time.

15th. Then you are not on friendly terms, are you?

Ans. I am not a friend of his, but are on good terms.

16th. From those difficulties you have mentioned, arising from those business transactions, you have no reliance in his truth have you?

Ans. I have not.

257 *Direct resumed.*

17th. Is your opinion as to his credibility on oath derived from his general reputation, or from the difficulties growing out of your transactions with him?

(Obj. to as leading.)

Ans. Both from his general reputation and from the transactions I have had with him.

Cross-exam. resumed.

18th. How long before your transactions with him was it you heard his reputation discussed by the community?

Ans. I don't recollect how long it was before, afterwards all the time.

Examination closed.

TITO L. DE LA ROSA.

Sworn to and subscribed before me this 28th day of November, A. D. 1860.

JNO. B. WILLIAMS, *U. S. Com.*

258 Endorsed: Filed December 6, 1860.

W. H. CHEVERS, *Clerk.*

Deposition of J. W. Mandeville.

United States district court northern district of California.

SAN FRANCISCO, *Dec.* 11, 1860.

THE UNITED STATES
vs.
HEIRS OF JOSÉ HIGUERA.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came J. W. Mandeville, a witness produced on behalf of the United States in case No. 228, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 148 on the docket of the said board of commissioners, and was duly sworn
259 and testified as follows:

Present: Calhoun Benham, U. S. att'y, by J. B. Williams, for the United States; R. Augustus Thompson.

Questions by U. S. att'y.

Ques. 1. State your name, age, place of residence, and occupation.

Ans. J. W. Mandeville; am 36 years of age; I reside in San Francisco; I am surveyor general of the U. S. for California.

Ques. 2. State whether or not you issued instructions for the survey of the land finally confirmed in this case to E. Twitchell, U. S. deputy surveyor.

Ans. 2. The first instructions for the final survey of this land were issued by Col. Hays. I subsequently issued verbal instructions to have the survey changed to the form which was subsequently approved by me.

Ques. 3. Please examine the document now shown you, marked Ex-
260 hibit Mandeville No. 1, and state whether you recognize them as a copy of the written instructions furnished said Twitchell by Col. Hays, your predecessor in office?

Ans. 3. It is a copy of the original on file in my office.

Ques. 4. Have you examined the original outline of a plat of a survey now on file in your office, a copy of which will be filed with your deposition, marked Exhibit Mandeville No. 2; and if so, state whether it shows the survey as originally made by said Twitchell under those written instructions?

Ans. 4. I have examined it, and it is a copy of the plat as returned by said Twitchell.

Ques. 5. State briefly the nature of the verbal instructions given by you.

Ans. 5. It was to change the original survey by commencing at a lone tree, and running along in a southeasterly direction, shown by the approved survey.

261 Ques. 6. Please state your reasons for rejecting the first survey made by Twitchell, and for issuing the verbal instructions mentioned.

Ans. 6. The first survey made by Col. Hays extended beyond the lone tree, and as I considered over the main sierra spoken of in the grant and decree, and included lands that I thought did not belong within the grant, which opinion was based upon a personal examination of the land.

Ques. 7. Did you cause the testimony of witnesses to be taken on the ground before you?

Ans. 7. Both parties were, those in favor and those opposed to the survey, and they pointed out what each side claimed to be the boundaries of the ranch. There was no sworn testimony taken by me. I made a full and careful examination of the ground at that time.

262 Ques. 8. State the proceedings which happened subsequently.

Ans. 8. After the deputy surveyor had returned the survey to my office, I notified the claimants and all parties interested that I would submit the whole matter to the department at Washington. Testimony was taken in my office by those favorable to and those opposing the survey, which testimony, together with my report, were transmitted to the department at Washington for their decision.

Ques. 9. Examine the document now shown you, and marked "Exhibit Mandeville No. 3," and state whether it is a copy of the report you sent to Washington, and state also whether you are now shown certified copies of the depositions you have mentioned, which have heretofore been filed in the case?

Ans. 9. This exhibit is a copy of the report I sent on to Washington, and the depositions are copies of those on file in my office.

263 Ques. 10. Did you ever receive from the department at Washington an answer to your report?

Ans. 10. I did. A copy of that answer will be filed with this deposition, marked "Exhibit Mandeville No. 4." A copy of this answer purports to appear on page 652 of "Land Law Regulations and Decisions," by "Lester."

Ques. 11. Since making your report to the Land Office at Washington, have you in any manner changed your opinion as to the correctness of the official survey approved by you?

(Question objected to as irregular, incompetent, and irrelevant, and impertinent to the issue, as the fact, whether Mr. Mandeville has changed his opinion or not, could not possibly be evidence in this case.)

Ans. 11. I have not changed my opinion as to the correctness of the survey.

264 Ques. 12. Examine the documents now shown you, marked respectively Exhibits "Mandeville Nos. 5, 6, 7, and 8" to this deposition, and state whether they bear your certificate as surveyor general?

(The above question and the exhibits referred to therein are objected to as irrelevant and incompetent evidence in this case.)

Ans. 12. They are and do.

Examination closed.

J. W. MANDEVILLE.

Subscribed and sworn to before me this 11th of December, A. D. 1860.

CUTLER McALLISTER, *U. S. Com.*

Endorsed: Filed December 14th 1860.

W. H. CHEVERS, *Clerk.*

265 *Exhibit Mandeville No. 1.*

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, Cal., Dec. 23, 1856.

SIR: Whereas, in the claim of the heirs of José Higuera to the land hereinafter described, the decree of the U. S. board of land commissioners to ascertain and settle the private land claims in California has become final, the U. S. dist. attorney general having abandoned the prosecution of the appeal therefrom, and the appeal pending in the U. S. district court having been dismissed, I have thought proper to appoint you my deputy in this special case, for the execution of the final survey thereof.

In the language of the decree of confirmation, the land of which confirmation is hereby made, is situated in Santa Clara county, and is the same land formerly occupied by José Higuera, now deceased, and is known by the name of "Los Tularcitos," and is bounded and described as follows, to wit: beginning at the back side of the principal house on said rancho, standing at the foot of the hill, and running thence northwardly to a line tree on the left of the sierra,
266 (which tree is known as a landmark;) thence east, along the sierra, to the line of the land known as the rancho of José Maria Alviso; thence southerly, along the west line of said Alviso's ranch, till it intersects the Arroyo de la Penitencia; thence up said arroyo to the estuary, (estero,) and from this point to the place of beginning; the said line between the premises hereby confirmed and Alviso's rancho to be the line as the same was settled, agreed upon, and adjusted between said Higuera and said Alviso before the alcalde, Juan Alvarez; reference to be had, for more particular description, to the espediente and the map constituting a part of the same, which are on file in this case.

It appears, by an original paper on file in this case, that the line above referred to as having been agreed upon and settled between Higuera and Alviso, before Alcalde Alvarez, was the arroyito, (rivulet.)

You will make your survey in accordance with the description in the
267 decree of confirmation above set forth. Herewith I enclose you a copy of the map referred to, for your guide and governance in making said survey.

For a more particular description of the manner in which you are to proceed in the performance of the work, and standard of admeasurements, I refer you to my general instructions to deputies, dated June 15, 1855, a copy of which is herewith enclosed. Your compliance with the requirements therein is strictly enjoined.

Very respectfully, your obedient servant.
(In pencil) E. TWITCHELL.

Endorsed as follows: No. 17. Instructions to (in pencil) E. Twitchell, dep. surv., for making final *final* survey of rancho Tularcitos, confirmed to heirs of José Higuera.
SAN FRANCISCO, *Dec.* 23, 1856.

Recorded in book "A," p. 28.
(In pencil) No. 17.

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

268 I, J. W. Mandeville, surveyor general of the United States for the State of California, by virtue of the power vested in me by law, do hereby certify that the three preceding and hereunto annexed pages, numbered from one to three, inclusive, exhibit a true, full, and correct copy of an original

document, together with the endorsement thereon, now remaining on file in my office, being the record of the instructions issued Dec. 23d, 1856, for the survey of the rancho Tularcitos.

In testimony whereof, I have hereunto signed my name officially, [SEAL.] and caused my seal of office to be affixed, at the city of San Francisco, the tenth day of December, 1860.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Endorsed: Filed Dec. 14, 1860.

W. H. CHEVERS, *Clerk.*

[Here follows map, p. 268.]

269 *Exhibit Mandeville No. 3.*

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, June 30th, 1858.

SIR: Soon after assuming the duties of surveyor general, Mr. E. Twitchell, deputy surveyor, returned the plat of the final survey of the ranch "Los Tularcitos," completed under instructions from my predecessor, Mr. Hays. Objections were made to the lines of this survey, by parties residing in the Calaveras valley, and feeling satisfied that a personal visit to the rancho would better enable me to decide upon the point in dispute, I proceeded thither, and made a careful examination thereof. After comparing the final decree and papers in the case with the result of my examination on the ground, I directed the deputy surveyor to alter the south and east lines of the survey made by him, as in my judgment they did not correspond with the final decree of confirmation. My decision not being satisfactory to the claimants of the rancho, I deem it proper to submit the whole matter to the department, with the accompanying documents.

A. A copy of the plat of rancho Tularcitos, on which the continuous
270 black lines thus show the boundaries as originally seen by Mr. Twitchell, dep'y surv'y. The brown lines show the boundaries as adjudicated by myself, and the dotted black lines, those claimed by the confirmees.

B. Extract from the original grants.

C. Extracts from the testimony taken before the board of land commissioners, relating to the lines in dispute.

D. Decree of confirmation.

E. Testimony taken on behalf of the claimants, with a traced copy of the original diseño; and

F. Testimony taken on behalf of contestants.

I find, upon examination of the original grants, that José Higuera petitions Gov. Sola for the grant of the tract of de los Tularcitos, stating that it will be no detriment to the adjoining pueblos or missions, and hopes the favor will be accorded to him, &c. Gov. Sola directs that the petition be referred
271 to the officers of the missions and pueblos, that they may inform him what they deem just in the premises. The report of these persons being favorable, Gov. Sola, on the 4th of Oct'r, 1821, grants to said Higuera, the possession of the tract called Los Tularcitos, but before doing so orders the measurements to be run, and the monuments affixed on the four sides of the rancho, and report to the government the distance designated to him on each line, so that he, (Sola,) can issue the title of possession. A juridical possession appears to have been given to Higuera; and the officers state in their report that he is entitled to 600 varas on the north and south boundaries, 1,400 varas on the west, and 6,050 varas on the east boundary of the rancho.

No mention of fixing monuments appears in the report, nor does the final title from Gov. Sola, based upon these proceedings, appear in the papers on file.

In the month of Sept., 1837, Higuera petitions Gov. Alvarado for a ratification of Sola's preliminary decree, and also for an augmentation as repre-
272 sented in diseño annexed to the papers, this augmentation as represented in diseño annexed to the papers, this augmentation appears from the evidence to have been toward the western boundary of the rancho. It also appears that there is a dispute as to the southern boundary between Higuera and Alviso, and this line is suspended by Gov. Alvarado, until an agreement can be made as to the said boundary. In the month of February, 1839, Alvarado, stating that the difficulty having been settled as to the disputed line, accedes to the petition, granting also the augmentation asked for, and annexed this decree to the former one made by Gov. Sola. There is no stated quantity granted in these papers, as is usual in like cases, and the only mention as to where and how the land shall be located is set forth in the act of juridical possession. The land decreed by Sola does not appear to be very clearly pointed out, but I have no doubt as to the intention of Alvarado to grant Higuera the land as set forth in the diseño. The testimony before the board of land commissioners with regard to the line in dispute is to the following effect.

273 Doña Carme S. Bernal testifies that the boundary line begins at the back of the house, runs northerly *to a lone tree* (*chamiso*) *at the top of the sierra, which tree can be seen from the house;* that Higuera told her that his boundary ran from that tree to the other side of Los Calaveras, from beyond the Calaveras down the rear of Alviso's house, &c.; upon being cross-examined by U. S. law agent, she states, *the line* runs from the tree all along the top of the sierra &c. Jose Castro, in his testimony, first states "I don't know the boundaries, they are stated in the documents;" and on being shown the diseño states they are correctly delineated thereon, and the boundary begins at the principal house and runs north, about two and one half leagues to near the top of the sierra, thence east, about two leagues, &c. In the decree of confirmation of the board of land commissioners, from which no appeal was prosecuted, the line in dispute is described as follows:

Beginning at the back side of the principal house on said rancho, standing at the foot of the hill and running thence northwardly to a lone tree on the
274 top of the sierra (which tree is known as a landmark;) thence east along the sierra to the line of line known as the rancho of José Maria Alviso, &c.; no mention is made of specific quantity, nor does the decree refer to the act of juridical possession.

The testimony taken on the part of the claimants and contestants speaks for itself, and I refer the department thereto, before making a final decision of the matter; there are, however, three points that occurred to me in the examination of this matter.

1st. I can find no mention made in any of the original documents of the Calaveras creek or valley, except on the diseño, where a stream appears to be running from the hill into the posas, and designated as Calaveras.

2nd. A careful examination of the boundary lines of adjoining ranchos shows the custom of making the "sierras" the eastern boundaries and never crossing them.

3rd. By the general map of the State, on file in this office, the Calaveras river and valley are set down on the eastern side of an apparently high range
275 of hills or "sierras" and the arroyo de la Penitencia, on the western side of the same range.

After the personal visit made by me to the rancho, as before mentioned, and a careful examination of the decree of confirmation and accompanying papers as well as the evidence in the case, I am of opinion that the eastern boundary of the rancho Los Tularcitos should run from the tree mentioned in the confirmatory decree and the testimony in the case; thence along the sierra to Alviso's northern boundary, as shown in a brown line on plat A accompanying

this letter—should the Calaveras valley and river be included in the rancho, the eastern boundary would be outside of the plat marked A, taking in a large scope of valuable land, which I don't believe was included in the original diseño nor originally decreed Higuera.

Very respectfully, your obed't serv't,

(Signed) J. W. MANDEVILLE,
U. S. Sur'v Gen'l, Cal.

Hon. THO'S A. HENDRICKS,
Com'r Gen'l Land Office, Washington, D. C.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

276 I, J. W. Mandeville, surveyor general of the United States for the State of California, by virtue of the power vested in me by law, do hereby certify that the seven preceding and hereunto annexed pages, numbered from one to seven, inclusive, exhibit a true, full and correct copy of an original letter signed and addressed by me to the Commissioner of the General Land Office, June 30th, 1858, as the same now appears of record in my office.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the City of San Francisco, this tenth day of December 1860.

[SEAL.]

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Endorsed: Filed Dec. 14, 1860.

W. H. CHEVERS, *Clerk*

Exhibit Mandeville No. 4.

GENERAL LAND OFFICE, *June* 22, 1859.

277 SIR: Your decision in the matter of the disputed east boundary of "Los Tularcitos," as communicated in your report of 30th June, 1858, has been approved by this office; but notice of appeal from our decision having been filed, you will suspend action in the case until advised of a final decision by the appellate authority.

Very respectfully, your obedient servant,

(Signed) JOS. S. WILSON,
Acting Commissioner.

J. W. MANDEVILLE, Esq.,
U. S. Surveyor General, San Francisco, Cal'a.

Endorsed as follows: Act'g Com'r General Land Office to U. S. Sur. Gen'l, Cal'a, approving decision in case of rancho "Los Tularcitos."
June 22d, 1859.

GENERAL LAND OFFICE,
August 1, 1859.

278 SIR: In the case of the survey for "Los Tularcitos," the Secretary of the Interior, under date of 30th July, 1859, affirmed the decision of this office approving the survey of said claim recommended in your report of 30th June, 1858, and shown by map A, accompanying the same.

Very respectfully, your obedient servant,

JOS. S. WILSON,
Acting Commissioner.

J. W. MANDEVILLE, Esq.,
U. S. Surveyor General, San Francisco, Cal.

Endorsed as follows:

G. L. O. *Aug.* 1, 1859.

The decision in the case of rancho "Los Tularcitos" has been affirmed by the Sec'y of Interior.

(In pencil) No answer.

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, by virtue of the power vested in me by law, do hereby certify
279 that the two preceding and hereunto annexed pages, numbered from one to two, inclusive, exhibit a true, full and correct copy of original letters on file in this office from the General Land Office, Washington, D. C.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this thirteenth day of December, 1860.

[SEAL.]

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Endorsed: Filed December 14, 1860.

W. H. CHEVERS, *Clerk.*

Exhibit Mandeville No. 5.

To the Hon. the Board of Land Commissioners to ascertain and settle the private land claims in the State of California:

The petition of Antonia, Fulgencio, Dolores, Valentin, Mariano, Josefa, Encarnacion, Fulgencio, Micoela, Rita, Refugio and Agustina Higuera, states, that about the first day of January, A. D. 1822, Pablo Vicente de Sola, governor of the province of California, in the exercise of powers in him vested,
280 and by virtue of the laws then and there in force, granted to José Higuera (father of these petitioners) a tract of land called "Llano del Abrevadero, situated in what is now known as the county of Santa Clara and State of California, bounded and described, to wit: On the north by the southern boundary or line of the mission of San José, (now the southern boundary of the ranch belonging to Fulgencio Higuera;) on the east by the cerro, (mountain;) on the south by a line which is now the present northern boundary line of the ranch of José Maria Alviso; thence along the arroyo (creek) de la Penitencia, and by the estero on shore of the bay of San Francisco, which estero is the western boundary of said land; that in the year 1845, or thereabouts, the said grantee, José Higuera, died intestate; that Fulgencio Higuera, Valentine Higuera, Mariano Higuera, and Florencio Higuera, are the sons, and Antonia Higuera, Dolores Higuera, Josefa Higuera, Encarnacion Higuera, Micoela Higuera, Rita Higuera, Refugio Higuera, and Augustina Higuera are the said sons and
281 daughters, are the legitimate children and heirs of said José Higuera, deceased; that the said tract of land contains the quantity of two leagues, more or less, being the whole parcel of land comprised within the boundaries aforesaid; that the said grantee and said petitioner were and have been in the continued and uninterrupted possession of the land aforesaid since the date of said grant; that the espediente of said land has been lost or misplaced, and the petitioners do not know of its existence or whereabouts; that there is no evidence existing in the archives; that said land has not been surveyed by the surveyor general; that there is no known interfering claim; that these, the said petitioners for the support of the claim herein mentioned, rely upon all such proof as may be pertinent to said claim.

These petitioners pray that this hon. board will hear such evidence as may support this claim and decree a confirmation thereof.

THO'S B. GODDEN, *Attorney.*

282 Endorsed as follows: No. 149. Petition of the heirs of José Higuera to the ranch Llano del Abrevadero, granted by Governor Sola, 1822. No exhibits. Filed in office April 1st, 1852.

GEO. FISHER, *Sec'y.*
THO'S B. GODDEN, *Attorney.*

Recorded Record of Petitions, vol. 1, pages 7 and 8.

GEO. FISHER, *Sec'y.*

OFFCE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, and as such having in my office, and in my charge and custody, the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the three preceding and hereunto annexed pages, numbered from one to three, inclusive, exhibit a true, full, and correct copy of an original document filed in case No. 149 on the docket of the board of land com-
283 missioners aforesaid, together with the endorsement thereon, as the same now appears on file in my office, among the archives of said board.

In testimony whereof, I have hereunto signed my name officially, and caused
[SEAL.] my seal of office to be affixed, at the city of San Francisco, this tenth day of December, 1860.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Endorsed: Filed Dec. 14, 1860.

W. H. CHEVERS, *Clerk.*

Exhibit Mandeville No. 6.

Stamp fourth—One cuartillo.

Provisionally authorized for the Mexican republic for the years 1827 and 1828, in the Territory of California.

(Signed) ECHEANDIO.
(Signed) MARTINEZ.

Citizen José Ma. Alviso appears before you and makes representation that he possesses about two hundred head of neat cattle, a band of mares, with thirty tame horses, which property wanders off and is lost for want of a place.
284 Wherefore, with all earnestness, he prays that there may be granted to him the place or sitio of Los Milpitos, which is where Ignacio Higuera sowed, for which favor he will remain grateful.

S. S. S. Mission of Santa Clara, March 1, 1830.

(Signed) JOSÉ MARIA ALVISO.

To his honor the constitutional alcade of the puebla of San José, citizen Juan Alvirez.

PUEBLO OF SAN JOSÉ,
March 10, 1830.

I grant to the present petitioner the place he asks for, with the understanding not to prejudice his colindante.

(Signed) ALVIREZ.

Stamp third [seal] two reales.

For the years one thousand eight hundred and twenty-six and eight hundred and twenty-seven.

Stamp for the years 1828 and 1829. To the Governor:

Citizen José Maria Alviso, before your excellency, in the most favorable manner in law, presents himself and represents that he pos-
Stamp for the years 1830 and 1831.
sesses the number of six hundred head of large cattle, and a band of thirty mares, which property since the month of March,
285 Stamp for the years 1832 and 1833. in the year 1830, he has kept in a land belonging to the jurisdiction of the pueblo of San José, by
Stamp for the years 1834 and 1835.
grant from the ayuntamiento of that place, as appears by a document dated March 10th, 1830, which, together with the map of the place referred to, he transmits for the purpose of soliciting the grant in fee of the aforesaid land, with the limits shown on the map, referring to his before-mentioned property and the improvements which he has put in that place; they consist of two wall houses, an orchard of sixty fruit trees, a vineyard of six hundred vines, and other lands fenced and cultivated for his wheat crops, &c., wherefore he earnestly prays your excellency to be pleased
286 to provide as he has requested, swearing that this is not done with evil intent; that it is a favor, &c.

Mission of Santa Clara, November 1st, 1834.

(Signed) JOSÉ M. ALVISO.

MONTEREY, *Nov.* 29, 1834.

In conformity with the laws on the matter, let the ayuntamiento of the pueblo of San José Guadalupe report whether the person referred to in this petition possesses the qualifications prescribed for his petition to be attended to; whether the land petitioned for is included in the 20 leagues from the boundary, or the ten littoral leagues, expressed in the law of August 18th, 1824; if it is irrigable, depending on the seasons, or pasture land; if it belong to the property of any individual, mission, corporation, or pueblo, with everything else that it may think will conduce to explain the matter. This being complied with, it will pass this espediente to the rev. father ministers of the missions of Santa Clara and San José, that they may set forth whatever they may know on the subject.

Señor Don José Figueroa, general of brigade of the Mexican army, commanding-general, inspector and political chief of Upper California, thus ordered, decreed, and signed, to which I certify.

(Signed) JOSE FIGUEROA.
(Signed) AGUSTIN V. ZAMORANO, *Sec'y.*

Endorsed as follows: No. 141. B. Milpitos. Translation of espediente. Filed in office March 30, 1852.

GEO. FISHER, *Sec'y.*

287 Recorded in Record of Evidence, vol. 7, page 398.

GEO. FISHER, *Sec'y.*

[Printed.]

HALLECK, PEACHY & BILLINGS,
Counsellors at Law.

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, and as such having in my office, and in my charge and custody, the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the four preceding and hereunto annexed pages, numbered from one to four, inclusive, exhibit a true, full, and correct copy of an original document (B,) filed in case No. 141, on the docket of the board of land commissioners aforesaid, together with the endorsements thereon, as the same now appear on file in my office among the archives of said board.

In testimony whereof, I have hereunto signed my name officially, and
288 [SEAL.] caused my seal of office to be affixed, at the city of San Fransisco, this tenth day of December, 1860.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Endorsed: Filed Dec. 14, 1860.

W. H. CHEVERS, *Clerk.*

Exhibit Mandeville No. 7.

Sello cuarto—Una cuartillos.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

ANTONIO MARIA OSIO.

ALVARADO.

[SEAL.] Manuel Jimeno S'rio del gobierno del departam'ta de las Californias.

Certifico q'e la copia del diseño q'e se demuestra á la vuelta es igual con el original q'e corre agregado en el espediente q'e exista en la secretaria di mi cargo, perteneciente á D'n Fulgencio Higuera, sobre el parage nombrado la Aguas Caliente, Monterey, diez y nueve de Agosto de mil ochocientos cuarenta.

MAN'L JIMENO.

[Here follows map—page 288.]

289

290 No. 78. Fulgencio Higuera, Rancho de Aguas Caliente, E, map filed in office Feb'y 27, 1852.

GEO. FISHER, *Sec'y*

Recorded in book of Rec. of Ev., vol IX, page 504.

GEO. FISHER, *Sec'y*

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, and as such having in my office, and in my charge and custody, a portion of the archives of the former Spanish and Mexican territory, or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the three preceding and hereunto annexed pages of tracing paper, numbered from one
291 to three, inclusive, exhibit a true, full, and correct copy of an original

document filed in case No. 78 on the docket of the board of land commissioners aforesaid, together with the endorsement thereon, as the same now appears on file among the archives of said board in my office and in my charge and custody.

[SEAL.] In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this tenth day of December, 1860

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Endorsed: Filed December 14, 1860.

W. H. CHEVERS, *Clerk*

292 *Exhibit Mandeville No. 8.*

[Here follow maps 1 and 2—page 292.]

293 OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, and as such having in my office, and in my charge and custody, a portion of the archives of the former Spanish and Mexican territory, or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the two preceding and hereunto annexed pages of tracing paper, numbered from one to two, inclusive, exhibit a true, full and correct copy of two original diseños or maps, filed in case No. 141, "Milpitas," on the docket of the board of land commissioners aforesaid, as the same now appears on file among the archives of said board in my office, and in my charge and custody.

[SEAL.] In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed at the city of San Francisco, this tenth day of December, 1860.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

294 Endorsed: Filed Dec. 14, 1860.

W. H. CHEVERS, *Clerk.*

295 *Opinion approving survey.*

United States district court, northern district of California.

THE UNITED STATES
vs.
THE HEIRS OF JOSÉ HIGUERA. } No. 228—Los Tularcitos.—Nov. 25, 1861.

In 1821 José Higuera obtained from Governor Sola an order that he be put in possession of a tract of land which he had applied for under the name of Los Tularcitos. Possession was accordingly given to him by Luis Peralta, whose report and description of the tract measured are found in the espediente.

In 1839 Higuera petitioned Governor Alvarado for ratification of the grant made by Sola, together with an augmentation, as represented on the diseño annexed to his petition.

This application was granted by the governor, but the formal title does not appear to have been issued.

The decree of the board confirming the claim was founded on the order of Alvarado. In their opinion they state, "on examination we are satis-
296 fied that the decree of Alvarado must be construed to be a recognition

of the right of the grantee previously existing in the premises claimed under Sola's grant, as well as a grant of the augmentation solicited.

"Both are embraced in one description, and delineated on the same map which was presented with the petition to Alvarado, and now constitutes a part of the espediente without giving any description to distinguish the portion of the premises claimed under Sola's decree from that solicited as an addition."

The claim was accordingly confirmed to the land delineated on the diseño—oral testimony being received to explain by evidence of the actual occupation and generally recognised boundaries of Higuera's rancho, such indications of the diseño as were uncertain or obscure.

The appeal from the decree of the board having been dismissed, a sur-
297 vey was made by the surveyor general, which is now brought into court on objections filed on the part of the claimant.

The only question presented relates to the location of the eastern boundary of the tract. On the part of the U. S. it is contended that the survey properly bounds the land by the range of hills which separate the valley of the Tularcitos and the plain to the west of it from the valley of the Calaveras, while the claimants maintain that this last mentioned valley should be included, and the eastern line run between certain points on the sierra beyond it.

In ascertaining the true boundaries of the land conceded to Higuera, it is evident that the diseño presented by him to Alvarado is our chief, if not our only guide. Neither his original petition to Sola, nor the order of the latter, nor the petition to Alvarado, nor the concession that followed, mention any boundaries, or even the extent of land granted.

298 The measurement made by Peralta under Gov. Sola's order, which might have enabled us to identify the tract of which Higuera was originally put in possession, is wholly unintelligible. It merely states that he, Peralta, gave possession of the tract called Tularcitos to José Higuera, "designating for him on the south 600 varas, on the north the same, on the west 1,400 varas, and on the east 6,050 varas, which ambit embraces the said tract de los Tularcitos."

No beginning point is mentioned, and it is evident that lines of the lengths designated cannot be connected so as to enclose any parcel of land.

We must therefore look to the diseño which represents as well the tract originally conceded, as the augments solicited of Alvarado, to ascertain the boundaries. Nor ought parol testimony as to the boundaries as claimed by Higuera, or as understood by his neighbors, be received to extend the tract beyond the limits designated in the diseño.

299 On the north and south the rancho of Los Tularcitos was bounded by lands of other proprietors, but on the east there was no colindante, and the cattle of Higuera might have roamed without molestation far beyond the boundaries of the lands really conceded.

The fact then that rodeos were given, and were a house built in the Calaveras valley by Higuera, or his sons, though not without some significance, is yet far from conclusive as to the true limits of the grant; nor should it have any weight whatever, except as explaining and making clear what may be obscure in the indications of the diseño.

The diseño represents a tract of land lying between two arroyos which issue from a range of hills on the east; on the north is the arroyo de Calera; on the south that of Los Coches. On the west the land is bounded by the arroyo de la Penitencia.

300 The identity of these streams is not disputed, although but one of them has its name inscribed upon it on the diseño.

On the diseño are also represented the houses of Higuera and of Alviso—the former on the Calera, and the latter on the Coches—and both situated at the base of the hills, a little below the points where the streams emerge into the

open plain; a short distance above the base of the hills, and about midway between the northern and southern boundaries, there is marked on the diseño the word Tularcitos, and a small square inscribed "Viña," while still higher up, and in what is apparently intended to represent a narrow valley, a "sausal" and a "posa" are designated. Beyond this, in a range of hills to the east, is a solitary tree marked "chemisal," and along the base of the ridge the word "Calabera" is written.

It is contended by the claimants that the narrow valley represented on
301 the diseño is the valley of the Calaveras creek, and that therefore the eastern boundary is the ridge of the main sierra beyond that stream. The only indications of the diseño which might seem to support this view, are the positions of the Tularcitos and the Viña at the base of the first range of hills, and the word "Calaveras" on the 2d range.

If the spot marked "Tularcitos" in green crayon on the map of Stratton were clearly shown to be identical with the Tularcitos of the diseño, there might be some reason to contend that the valley represented on the diseño as lying to the east of it, and beyond an intervening range of hills, must be the valley of the Calaveras, for the place marked "Tularcitos" on Stratton's map is situated at the base of a range of hills which forms the western boundary of the Calaveras valley. The valley, therefore, represented on the diseño as lying to the
302 eastward of those, might well be supposed to be the valley of the Calaveras, for none other exists.

I think it sufficiently established by the evidence, that at the point marked Tularcitos on Stratton's map some houses were erected, and perhaps some cultivation made by Higuera.

It is also shown that there exists at the place some Tulares and a small lagoon.

But it nevertheless appears to me plain that this place was not the one intended to be represented on the diseño.

The tract delineated on the diseño is a rectangular piece of land, of which about two-thirds is plain or level land, and one-third hilly or broken.

The topographical map of Stratton accurately exhibits the line where the hills begin towards the eastern portion. It also indicates the points where the creeks issue from the hills, and the houses of Alviso and Higuera, which still exist upon the ground.

303 They are situated, as before remarked, on the level land, but immediately at the base of the first hills, and at or very near the points where the creeks came down into the plain.

The position of these houses, as shown on the topographical map, precisely corresponds with their position as indicated on the diseño, and it serves to identify with entire certainty the range of hills at the base of which the diseño represents them as situated. That range is beyond doubt the first hills which rise from the plain to the east. The "Tularcitos" of the diseño is represented as situated at a short distance to the east of the base of this range, about midway between the creeks, and very little to the eastward of a line drawn between the houses.

But the point marked in green "Tularcitos," on Stratton's map, in no respect corresponds to these indications. It is situated a little more than one-
304 fifth the distance between the creeks, and far to the eastward of the base of the first hills, or of a line drawn between the two houses. No inaccuracy which we can attribute to the draughtsman of the diseño will justify us in supposing that by the *Tularcitos* of the diseño the "*Tularcitos*" of Stratton's map was intended to be designated.

But near the base of the first hills, about midway between the creeks and a little to the eastward of a line drawn between the houses, a laguna and tulares

are found, in all respects corresponding to the position of the Tularcitos of the diseño.

It cannot, I think, be doubted that these latter were intended.

Reliance is also placed on the word "Calabera" as indicating the Calaveras valley.

But it is impossible to regard the narrow valley or level place between the hills represented on the diseño as intended to designate the valley of the Cala-
305 veras situated far to the eastward, and through a part of which flows the large stream called Calaveras river; no such stream is represented on the diseño, and if the hills marked on the diseño as lying to the eastward of the small valley were intended for the sierra which lies beyond the Calaveras valley, we must suppose a mistake as to the situation of that valley and extent to have been committed which is hardly conceivable.

The whole extent of hilly land represented on the diseño, from the base of the hills at which the houses are situated to the extreme eastern portion of the map, is not quite one half the distance from the Penitencia creek to the commencement of the hills, in other words, about two-thirds of the tract is level land to the west, and one-third hilly land to the east.

But if the hills of the diseño are the range of mountains beyond the Calaveras valley, the level land will constitute but little more than one quarter of
306 the whole tract, 3 quarters of it lying to the east of the first hills and of the houses. Such a mistake is too gross to have been committed even by the draughtsman of a Mexican diseño.

But it is shown in evidence that the name "Calabera" was applied to a high peak in the range of hills between the Calaveras valley and the plain, and situated on the eastern side of a small valley lying between the first and second range of hills, which was undoubtedly intended to be represented on the diseño. In this valley are the remains of a willow thicket or sausal entirely corresponding in situation with the spot marked "sausal" on the diseño—while in the Calaveras valley beyond no similar thicket is found.

But the most conclusive indication is the chemisal or lone tree, marked on the diseño as situated on the hills to the eastward of the small valley.
307 This tree, which is a noted and conspicuous landmark for miles around, is identified with great certainty, and its position determines beyond dispute what range of hills was intended to be represented on the diseño. In the map of the pueblo lands of San José which is evidently prepared with unusual care and skill, the same tree is represented as standing on the eastern boundary line of Higuera, while behind it and beyond the ridge on which it stands the "Plan de Las "Calaberas," or plain of the Calaveras, is distinctly delineated.

The indication therefore afforded by the position of the chemisal appears to me conclusive. For the diseño plainly represents it as situated on the hills to the eastward of the small valley delineated upon it. It is found to the eastward of a small valley in the hills, but far to the westward of the valley of the Calaveras. The valley intended to be represented cannot therefore be the valley of the Calaveras.

308 The decree of the board confirmed the claimants to a tract of land the description of the boundaries of which were derived from the diseño, and the testimony of witnesses produced by the claimants themselves, those boundaries are described as "beginning at the back side of the principal house on said rancho at the foot of the hill, running thence northwardly to a lone tree on the top of the sierra, (known as a landmark,) thence east along the sierra to the line known as the rancho of José M. Alviso," &c. The courses of these lines are evidently incorrect, probably through a clerical error, for a line from the house to the tree will run in a nearly easterly direction, and a line along the hou a from the tree to the land of Alviso will run in a southerly or S. easterly sierrtion. But the location of the lines intended by the decree cannot be mis-

taken. The first is to be run from Higuera's house to the tree, and the second from the tree *along* the sierra, and at right angles to the first line, to
309 the lands of Alviso; a line run east from the tree would merely be the production of the first line, it would not run *along* the sierra but *over* it, nor would it reach the lands of Alviso, which lie to the south.

It is clear that the board intended to fix the boundaries precisely as they have been established in the official survey. No appeal was taken from this decree, and in approving the survey there is given to the claimants the very tract confirmed to them by the decree of the board, founded on their own testimony, and with which at the time they seem to have been entirely satisfied.

Endorsed: Filed November 25th, 1861.

W. H. CHEVERS, *Clerk.*

310 *Final decree.*

At a stated term of the district court of the United States for the northern district of California, held at the court-room in the city of San Francisco, on on Tuesday, the 26th day of November, A. D. 1861.

Present: Hon. Ogden Hoffman, dist. judge.

THE UNITED STATES
v. } No. 228.
HEIRS OF JOSÉ HIGUERA.

It appearing to the court that on June 7th, 1859, an order was entered directing the return of the official survey of the land confirmed in this case; that on Oct. 20, 1859, in pursuance of said order, the surveyor general of the United States for California returned to this court a certified copy plat of his said survey; that on Nov. 22, 1859, the claimants, by their attorney, filed their exceptions to said survey; that testimony in support of and against said exceptions was duly taken, and that upon said exceptions and testimony the
311 cause came regularly to a hearing, all parties heard by their respective attorneys, and due deliberation had in the premises.

Now, therefore, in consideration whereof it is ordered, adjudged and decreed that the said exceptions be, and the same hereby are, overruled, and that the said survey be, and the same hereby is, approved and confirmed.

And it is further ordered, adjudged, and decreed that the claim of the said claimants is a good and valid claim for the land granted by the Mexican government to José Higuera, known as Los Tularcitos, and lying and being in the county of Santa Clara, northern district of the State of California; and that the same be, and hereby is, finally confirmed to the heirs of said José Higuera, deceased, to the extent of four thousand three hundred and ninety four $\frac{35}{100}$ acres, located and surveyed by the surveyor general of the United States for California, as shown by said plat filed October 20, 1859, the field-notes of which survey
312 were approved by said surveyor general Oct. 12, 1859; and to which said plat, certified by said surveyor general Oct. 13, 1859, and marked "Approved, November 26, 1861, Ogden Hoffman, Dist. Judge," and annexed to and made a part of this decree, refrence is had for more particular description of the land hereby confirmed to the said claimants.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed November 26th, 1861.

W. H. CHEVERS, *Clerk.*

[Here follows plat of official survey, page 312.]

313 *Order allowing* 10 *days, &c., to present application for rehearing.*

U. S. Dist.Court, Nor. Dist. Cal.

THE UNITED STATES
v.
THE HEIRS OF JOSÉ HIGUERA. } No 228.

On motion of the claimants by their attorney, it is ordered that ten days from the commencement of the next term of this court be allowed them to present their application to reopen and set aside the decree of this court confirming the survey and location of the lands claimed in said cause, as approved by the surveyor general, and that in the mean time all proceedings under said decree to be suspended.

SAN FRANCISCO, *November*, 30, 1861.

Endorsed: Filed November 30th, 1861.

W. H. CHEVERS, *Clerk.*

314 *Order allowing* 5 *days additional time, &c.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Tuesday the tenth day of December, in the year of our Lord one thousand eight hundred and sixty one.

Present: The honorable Ogden Hoffman, dist. judge.

THE UNITED STATES
v.
HEIRS JOSÉ HIGUERA. } No 228.

And now, at this day, on motion of R. Aug. Thompson, esq., of counsel for claimants, it is ordered by the court that he have five days additional time to present petition for rehearing.

Endorsed: Filed December 10th, 1861.

W. H. CHEVERS, *Clerk.*

Petition for rehearing.

315 In the district court of the United States for the northern dist't of California.

THE UNITED STATES,
vs.
THE HEIRS OF JOSÉ HIGUERA. } D. C. No. 228.—"Los Tularcitos."

In the matter of the survey and location of the above-named rancho—

Now come the claimants herein, and move the court to grant them a rehearing in the above-entitled cause, upon the grounds following, to wit:

1st. That the order entered herein approving and confirming the survey and location of said ranch, as made and approved by the surveyor general of the United States, is unsupported by the evidence in the cause.

2d. That the facts found by the court, upon which said order is based, are not sustained by the evidence in the cause.

3d. That the court erred in disregarding the proofs showing judicial possession of a part of the land which is excluded by that survey.

316 4th. That the said order is erroneous in confirming said survey in this, that said survey is not in accordance with the decree of confirmation by the board of land commissioners.

By examining the evidence upon which the decree of the board of land

commissioners is based, it will be seen that they intended, by the word "sierra," to indicate the sierra or high range of hills lying east of the Calaveras valley. The only evidence before them being that of Alvarado, Castro, and Carmen Sibrian de Bernal. Castro says: "The boundary begins at the principal house and runs north about two leagues and a half to near the top of the sierra, thence east about two leagues, thence south about two leagues and a half with the line of José Maria Alviso."—Transcript, page 9.

Carmen Sibrian de Bernal says: "I am acquainted with the boundaries. It begins at the back of the house, at the foot of the hill; the line runs northerly to a lone tree *(chamisal)* at the top of the sierra, which tree can be seen from the house. José Higuera has pointed this tree out to me as his boundary, and he told me the line run from that tree to the other side of the Calaveras—from beyond the Calaveras down the rear of the house of José Alviso that line continues," &c.—Transcript, page 21.

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The same witness also says: "The form of the land is that of a parallelogram, two to three leagues on the longest side, and perhaps one league in width."—Transcript, page 22.

In the opinion of the board, confirming the claim, the following language is used, which opinion it will be remembered is based on the testimony of the above-mentioned witnesses:

"The land to which title was solicited of Alvarado, as designated in Higuera's petition, involved the elements of description. First, it was the land then occupied by the petitioner, and which he had occupied more than twelve years; and, secondly, it was that represented on the annexed map and lines as drawn on the east and west sides, evidently designed to represent the lines of the premises; but on the north and south, while some natural objects are named, there are no lines to show precisely how far the land extended. The testimony of said Castro and Carmen Sibrian de Bernal described the lines of the rancho as claimed and occupied by said Higuera. These are described as the boundaries as they were known as early as 1824, and as they continue to be known. They correspond with the delineations on the map, so far as the same are there represented; and I think are sufficiently clear and definite to show what the land was which the party solicited, and to which Governor Alvarado intended to give him title." It is apparent that the land which Higuera desired to have granted to him by Alvarado was that which he then possessed and had possessed more than twelve years before making that petition, and which he attempted to delineate upon the diseño attached to the petition, for a particular description upon that diseño are represented on the east the sierra, having drawn near its base at the edge of the Calaveras valley a line which the land commissioners say was evidently intended to represent his eastern boundary; towards the north end of the line are represented some trees, a single tree being nearest the end of the line, which tree is clearly the one referred to and intended to be designated in the decree of confirmation as the tree on the sierra; it could not possibly mean the tree on the cerro or peak past which the line is said to run by Carmen Sibrian; for taking her testimony and the diseño together, it is very clear that the line extended to the east side of the Calaveras valley, there being no tree marked on the diseño to represent the tree past which the line ran to the other side of Los Calaveras, and there being trees on the sierra beyond the Calaveras valley, that must be the place meant.

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Admitting that it was improper to admit testimony to extend the limits of the grant by proving the extent of Higuera's possession, it will scarcely be contended that it was not competent and proper to introduce testimony of the extent of such possession for the purpose of explaining the diseño, and for the purpose of showing the land he occupied at the time he made his petition to Alvarado and had occupied for twelve years before that time, because that was

clearly the land he asked for, and was as clearly that which Alvarado intended to give him. The testimony of José Antonio Alviso, José Fernandez, Nasario Galindo, Pedro Chaballa, Antonio Maria Pico, Fulgencio Higuera, wit-
321 nesses for claimants, all prove that his possession had extended eastward so as to include the Calaveras valley; that he occupied it exclusively, no one disputing his right to the possession of it, nor in any way interfering with his enjoyment of it, but that, on the contrary, his right to it was universally conceded ever after. The grant was made to him by de Sola in 1821; in this these witnesses are corroborated by the testimony of Francisco Alviso and José Romero, witnesses introduced on behalf of the United States, and there is no evidence conflicting with the testimony of these witnesses except that of Agatin Ruis, who is shown by the testimony of Pedro Chaballa, Francisco Sanchez, and Tito L. de la Rosa to be a vagabond, and unworthy of credit, added to which he has long been a squatter upon the ranch.

It may be proper to mention in this place that at the time this case
322 was submitted to the court, it was understood by the counsel of claimants to have been announced by the court that the final decree of confirmation would be held to be, in a certain sense, conclusive, yet upon the question of boundary the court would look into the grant, the diseño and the proofs explaining the diseño, and determine from all together the true meaning and intent of the decree, and the location to be made under it; but that a conclusive effect has been given to the strict letter of the decree without reference to those elements of construction, would appear from the opinion of the court. It is, however, insisted by the claimants that even giving such effect to the decree, the eastern line must be located to the east of the Calaveras valley to fulfil the call of the decree for the tree on the sierra, as the testimony of many, indeed, nearly all, of the witnesses named establishes the fact that there is a range of hills lying to the eastward of the Calaveras valley known as a
323 sierra. They all concur in calling the range east of the Calaveras valley the sierra, and designate the range of hills on the west side of the valley, out of which the peak rises, upon which is located the tree past which Carmen Sibrian says the line passes, and which is at the most northern corner of said approved survey by the various names of *cerritos*, (little hills,) *cerros*, (isolated hills,) and *lomas muertos*, or foot-hills; and the particular peak upon which the last mentioned tree is situated is designated as the *cerro* de los Calaveras, while the *plan de los Calaveras* lies between these *cerros* and the *sierra*. The distinction between the words *cerro* and *sierra* is very great and is universally understood, and the two names never confounded by the Spanish people of California; the word *cerro* being invariably applied to an isolated hill, while by the word *sierra* is intended a high range of hills or mountains.
324 That the plan de los Calaveras was intended to be, and is, included within the limits asked for by José Higuera is apparent from the diseño, the word "calabera" being written in what clearly appears to be a level place representing a valley and not a mountain. There also appears on the map or diseño, running through the valley towards the north from the place marked *posa*, an arroyo or stream, intended to represent the arroyo de los Calaveras, which derives its name from the valley through which it flows, and which is shown upon Stratton's map, but without a name, he having, from some cause which does not appear, named another stream, flowing through a cañon to the north of the valley, as the river Calaveras.

It is further objected that the diseño does not represent the Calaveras valley as included within the lines of the grant, because it does not appear in evidence that there is any *sausal* in that valley. That there is a *posa* in
325 that valley which sometimes becomes dry, and a sausal, with a stream flowing out of it towards the north, is shown by the testimony of Nasario Galindo. Pico also testifies to the existence of willows in the valley, and

the only testimony in the case conflicting with this, in the slightest degree, is that of Stratton, who says he "found no *posa* or *sausal;*" but we are not informed that he looked for any, or that he could distinguish or knows the difference between a sausal, a chapperal, and an alisal.

It is respectfully submitted that even if there is no sausal there, that fact is not one of such very great importance that it would furnish any ground of inference that the place on the diseno marked "calabera" is not the Calaveras valley, for ten years or more of cultivation might very easily have obliterated all traces of any sausal that might have existed there at the time Higuera prepared the diseno; but the fact is, the sausal yet exists there, as is shown
326 by the evidence, and is, in fact, located at a point corresponding with its location on the diseno.

It is said in the opinion of the court in this case, that "no inaccuracy which we can attribute to the draughtsman of the diseno will justify us in supposing that by the *Tularcitos* of the diseno, the Tularcitos of Stratton's map was intended to be designated."

In reference to that proposition it is perhaps fortunate for the claimants that nothing is left for conjecture, inference, or supposition, as a very cursory examination of the testimony, both on behalf of the United States and on behalf of the claimants, will show beyond all controversy that there is not now, nor has there been at any time within forty years or more, any place in that vicinity known by the name of Tularcitos, other than that designated Tularcitos,
327 in green crayon, on Stratton's map. It is proven that there is a lagoon there in which tules grow, and from which that spot derives its name of Tularcitos, which is the diminutive of tular, a large pond or lake overgrown with tule. It is also shown, by uncontradicted testimony, that it was at that place that José Higuera had his houses and vineyard, the location of each being particularly described, and correspond exactly with the relative positions of the lagoon represented on the diseno by the word Tularcitos, and with the square marked *Viña;* and yet the conclusion is arrived at by the court, in the face of this testimony, that that is not the place intended to be designated on the diseno by the word Tularcitos.

The only foundation for this conclusion being the bare opinion of Mr. Stratton, who says he has made a topographical sketch of the country in that
328 vicinity at the instance of parties interested in preventing the claimants from obtaining what of right belongs to them, and which they and their ancestors have possessed and enjoyed as owners for more than forty years, their right never being questioned before the American occupation of the country. Mr. Stratton does not make any pretence that he has any knowledge of the names of localities on that rancho, either personal or hearsay; he merely gives his bare opinion, and the court gives to that opinion a force and effect greater than it allows to the sworn statements of witnesses who state facts which have been known to them from their infancy. All the witnesses who speak of the matter, and they are many, designate the spot marked in green, Tularcitos, on Stratton's map as the true location of the place always known by that name. If there was any evidence tending to show that there was now or ever had
329 been any other place on that rancho known by the same name, or which from its appearance could be entitled to such a designation, there might be some pretence for contending that the Tularcitos of the diseño and that marked in green on Stratton's map are not identical.

The fact is, and it is so shown by the evidence, that Tularcitos of the diseño is the same place as that marked in green on the map of Stratton. That there was no other is too plainly shown to be questioned; that Stratton's opinion is entitled to no weight at all is insisted upon. There are no facts supporting it whatever. The diseño shows the vineyard to have been at the place known by the name of Tularcitos, and no pretence is made that any traces exist of any

such thing at the place Stratton imagines is the point intended to be represented on the diseño by that name. The only reason he gives for his opinion is
330 that there is at his Tularcitos a low, wet piece of ground such as is known in this country by the Spanish people as a *cienega*.

It is respectfully submitted that it was erroneous giving such weight to the mere opinion of Stratton in view of the positive proof in the case relating to the same subject.

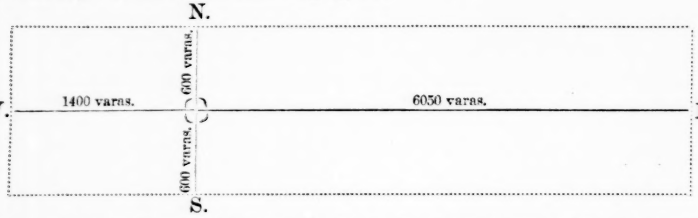
Much stress is laid upon some discrepancies appearing in the diseños in showing the precise location and position of several objects delineated upon it in their relation to each other, and to the fact that the level land upon it appears to be of greater extent than that which is hilly. In looking at such a map it should be borne in mind that it is a rude topographical sketch made by an ignorant ranchero, evidently more accustomed to the use of the lasso than to the pen or the instruments of an engineer. Rude as the sketch is, it is a very fair representation of the land so long occupied by Higuera and his children; and
331 if it does present some inaccuracies, it shows no more gross ones of course and distance than are shown upon the pueblo map of San José, notwithstanding the "unusual care" said to have been observed in its preparation. In regard to that map, we contend that it ought not to be permitted to be considered in determining the questions presented in this case, because it does not on its face purport to be a map of the land claimed, but, on the contrary, it only purports to be a map of the pueblo lands, and only shows in some places the lines of portions of some ranchos which are included within the pueblo lines, without attempting to show either their extent or location with even approximate precision.

It may be urged that the tree on the Cerro de los Calaveras is the tree intended in the decree. If any doubt exists in relation to what the intention of the decree is, we must look to the testimony on which that decree is based, and also to the opinion of the tribunal which made the decree. If we do so, all
332 doubt is at once dispelled, the distance the line is said to run reaching far beyond and reaching to a point perfectly corresponding to the call of the decree—that is, to a tree on the *sierra*—a reference to the diseño showing trees upon the side of the sierra and one near the end of the line which the commissioners say was evidently intended for the east line by Higuera. It is also shown by the testimony of witnesses, (and their evidence is not disputed,) that on the sierra on the east side of the Calaveras valley there is much chemisal, that there are trees growing there in the chemisal, thereby showing that that place corresponds most nearly with the place marked on the diseño, and sufficiently identifying it.

It is a fact of some significance, and we think entitled to some little consideration, that Edward Twitchell, deputy U. S. surveyor, who made the first survey of the rancho, marked the lines substantially as they are claimed
333 to run across the Calaveras valley in accordance with the possession given by Peralta under the grant from de Sola, not, however, extending far enough to the north and south to include the augmento granted by Alvarado. He is also shown to have had for several years a knowledge of the names of places upon the rancho, and experienced no difficulty in finding the point marked Tularcitos on the diseño, which he locates at the place so designated in green on Stratton's map, which place he selected as the initial point of Peralta's measurement, the lines in green crayon on Stratton's map corresponding with the lines of the Sola grant as run and located by the witness, his only guides being the decree of confirmation, the evidence taken before the land commission, and the diseño and instructions of the surveyor general, the proper sources from which the requisite information could be obtained, the exclusion of the Calave-
334 ras valley being clearly an afterthought, suggested by the persons occu-

pying the land, who appear desirous of appropriating to their use that which belongs to others.

It is also said, in support of the correctness of the approved survey, that the lines of the judicial measurement made by Luis Peralta in giving possession of the de Sola grant do not include any land, and for that reason it is wholly disregarded. It is insisted by the claimants that these lines do embrace some land, and that in the following form an initial point was first established and then 600 varas ran off towards the north, 600 varas to the south, 1,400 varas to the west, and 6,050 towards the east, the ambit of which lines would include a tract of land represented by the following figure:



335 which explains itself, the ambit being the arc embraced within the dotted line. It appears that the mode of measurement adopted by Peralta in that case was universally employed by the Californians in giving possession of or in measuring land lying in a rectangular form, and is the precise mode prescribed by the law of the Indies for designating the four leagues of land to which each pueblo became entitled under that law upon its organization, the direction being to run the lines from the plaza, which is understood to be the centre of the town, one league "*á las cuatro vientas*," (to the four cardinal points of the compass,) the ambit embracing four leagues of land. The supreme court of California have recognized this rule, and have found no difficulty in determining what is meant by it. This court also acted upon that rule in confirming the four leagues of land to the Pueblo de San José, there being no grant shown. That such was the mode of measurement prescribed by law

336 and in use in the country cannot be doubted by any one at all conversant with the Spanish law, and with the mode of measuring lands in use while that system prevailed; the only deviations made from it being in cases when insurmountable obstacles existed preventing the measurement being made in that manner.

Peralta says in his report that in giving possession to Higuera he made the measurement as hereinbefore stated, "*which ambit embraces the said tract de Los Tularcitos.*"

The initial point of Peralta's measurement is shown to have been a tree near the laguna at the place called Tularcitos, and is shown by the testimony of José Antonio Alviso to be still there; which witness says he was present and saw the lines run. It is also shown by the testimony of José Romero that José Higuera told him in his lifetime that the tree was the point of beginning; this statement, being made by Higuera at a time previous to any questions

337 being raised as to the extent of his land, is entitled to consideration.

If what Alviso says is untrue, it could easily have been shown to be so; but there is no such pretence.

It is respectfully submitted that the court is not warranted in arbitrarily rejecting such testimony, there being nothing to raise even a suspicion that it is not perfectly true, but, on the contrary, being most probable from its being supported by the report of Peralta, and a reference to Stratton's map showing that the distances mentioned in the north and south approximate very nearly to the natural objects mentioned by Alviso, as the boundaries on those sides.

It will be seen by referring to Stratton's map that a line run east from the Tularcitos, in green, 6,050 varas, will extend to the lower slope of the sierra, to the east of the Calaveras valley, and will include the greater portion
338 of the valley, the portion thereby included being shown by the green crayon line on Stratton's map, as laid down by Twitchell; that the 1,400 varas towards the west will include more than half the distance from the same point to the edge of the Santa Clara valley, the north and south lines reaching respectively nearly to the Arroyo de los Caches, and to the Arroyo de la Calera. Viewing in this manner the extent of the Sola grant, the application of Higuera for an augmento can be understood. When he asked that of Alvarado, he wanted the balance of the Calaveras valley to the north, and the plain to the east as far as the Penitencia, he being already in possession. He certainly did not intend, when he asked for an augmento, to be understood as applying for a title to that which he already had, nor did Alvarado so understand him, as appears from the grant.

Your petitioners further state, that upon the hearing of this case, and
339 while the opening counsel on part of the claimant was proceeding with his argument, he was interrupted by the court, who, with the topographical map before him, and a copy of the diseno proceeded to express his views of the case, and demonstrated so clearly to the minds of the counsel the erroneous character of the survey as made and approved by the surveyor general, and the correctness of the location as contented for by the claimants' counsel, that they, upon consultation, did not consider it necessary to proceed further with the argument, and submitted the case with a full confidence that their own views and those expressed by the court were so clearly sustained by the evidence that there would be no difficulty in arriving at a correct conclusion.

That in consequence of this action of the court, the claimants did not present their case as fully as they otherwise would have done. It is true they reserved the privilege of filing a brief in reply to that presented on behalf of the
340 United States, but upon an examination of that document they discovered nothing in it which in any degree impairs the positions taken by the counsel for the claimants, and fully sustained by the court in the intimations thrown out from the bench. The fact that the court afterwards changed its opinion does not better the position of the claimants in not having had a full hearing.

They therefore, for these considerations and those hereinbefore stated, now ask of the court a rehearing, in order that they may present their whole case, and that the attention of the court may be more particularly called to many points in the testimony which, either from haste or inadvertence, appear from the opinion of the court to have been entirely overlooked or not considered.

Dec. 17th, 1861.

THOMPSON & IRVING,
Att'y for Claimants.
S. O. HOUGHTON,
Att'y for Claimants.

341 Due service of a notice of the filing of the within petition this day admitted.

S. F., Dec'r 20th, 1861.

WM. H. SHARP. *U. S. Att'y.*

Leave is granted to file the within, and to reargue this cause on due notice to opposing parties.

Endorsed: Filed Dec. 19, 1861.

W. H. CHEVERS, *Clerk.*

342 *Motion and notice.*

In the district court of the United States for the northern district of California.

THE UNITED STATES
vs.
THE HEIRS OF JOSÉ HIGUERA. } No. —. Los Tularcitos.

In the matter of the survey and location of the rancho Tularcitos.

Now come the said claimants, and move the court that a hearing be granted them upon the petition herein filed with the clerk of this court, and presented by said claimants and duly certified.

S. O. HOUGHTON,
Att'y for Claimants.

To Mr. Wm. H. Sharp, U. S. Dist. Attorney, and J. B. Williame, Att'y for settlers:

You will please take notice that claimants in the foregoing entitled cause will call up the foregoing motion for hearing, at the opening of said court on the 25th day of January, A. D. 1862, or as soon thereafter as counsels can be heard.

343 S. O. HOUGHTON,
Att'y for Claimants.

In the district court of the United States for the northern district of California.

THE UNITED STATES
vs.
THE HEIRS OF JOSÉ HIGUERA. } No. —. Los Tularcitos.

In the matter of the survey and location of said rancho.

It is hereby stipulated and agreed that the annexed motion shall be called for hearing in said court on the 25th day of January, A. D. 1862, at the opening of said court, or as soon thereafter as counsel can he heard.

S. O. HOUGHTON,
Att'y for Claimants.

STATE OF CALIFORNIA,
County of Santa Clara, ss.

S. O. Houghton, being duly sworn, says that he served the within motion and notice on W. H. Sharp, U. S. district attorney, and on John B. Williams, att'y for settlers, on the 2d day of January, 1862, by depositing in the
344 post office at the city of San José, in said State, two copies of said motion and notice enclosed in envelopes with the postage thereon paid, and addressed one to said Sharp and one to said Williams, at San Francisco, in said State.

S. O. HOUGHTON.

Subscribed and sworn to before me this 2d day of January, A. D. 1862.

[SEAL.] JNO. B. HEWSON, *Notary Public.*

Endorsed: Filed January 4th, 1862.

W. H. CHEVERS, *Clerk.*

345 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Wednesday, the eighth day of January, in the year of our Lord one thousand eight hundred and sixty-two.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES *vs.* HEIRS OF JOSÉ HIGUERA. } 228.

Order granting a rehearing and setting argument for 25th inst.

And now at this day, on motion of R. Aug. Thompson, esq., of counsel for the claimants, it is ordered by the court that a rehearing be, and is hereby, granted; and the argument is hereby set for the 25th instant.

Endorsed: Filed January 8th, 1862.

W. H. CHEVERS, *Clerk.*

346 In the district court of the United States for the northern district of California.

THE UNITED STATES *vs.* HEIRS OF JOSÉ HIGUERA. } No. 228.

Answer of U. S. to petition for rehearing.

Answer of the United States to the petition of rehearing by claimants:

The petition for rehearing sets out with the statement of the grounds upon which a new trial is asked, and are briefly as follows: that the survey confirmed is not in accordance with the decree of confirmation; that the facts found by the court are not sustained by the evidence; that the court disregarded the parol evidence of the juridical possession of the tract granted by Gov. Sola, and consequently that the decree approving the survey is erroneous.

To these objections it may as briefly be answered that due deliberation having been had by the court as expressed in the decree, the proper remedy is by appeal to the Supreme Court.

347 In the majority of these cases there exists more or less uncertainty as to the points of the compass, and the decree of the board in this case shows a conflict between the courses specified and the actual location as the ground of the natural objects named. Disregarding the courses, the decree of the board plainly confirmed a tract described as follows: "beginning at the back side of the principal house on said rancho, standing at the foot of the hill, and running thence to a lone tree on the top of the sierra, (*which tree is known as a land-mark;*) thence along the sierra to the line of the land known as the rancho of José María Alviso; thence along the line of said Alviso's rancho, till it intersects the Arroyo de la Penitencia; thence up said arroyo to an estero, and from this point to the place of begining; the said line between the premises hereby confirmed and Alviso's rancho to be the line as the same was settled, agreed
348 upon, and adjusted between said Higuera and said Alviso before the alcalde Juan Alvirez.

It is evident, then, that we must find a lone tree situated on a sierra, which will lead to the line agreed on as the boundary between Higuera and Alviso before Alcalde Alvirez, in order to ascertain the only disputed boundary of the land granted.

The report of Alvirez shows that a small watercourse was agreed upon as the boundary between Alviso and Higuera. It is shown on Higuera's diseño, and can be no other than the Arroyo de los Caches delineated on Stratton's topographical map. This stream heads in a range of low hills lying between Alviso's house and the valley shown on the diseño, in which is a sausal. Crossing this narrow valley a high range is reached which, leaving Alviso's land to the south and west, leads to the tree surrounded with chemisal and which

349 is shown on Higuera's diseño. Near this tree heads the Arroyo Calera; and near the south bank of this stream is located the principal house of Higuera, "at the foot of the hills."

How a range of hills can be substituted upon which is not situated any lone tree "known as a landmark," and which does not lie, at its nearest point, less than from one and a half to two miles from the north line of Alviso, is not very apparent, so far as anything contained in the decree descriptive of the land confirmed is concerned.

The reference in the decree for more particular description to the espediente and diseño, without discussing the point as to how far the decree is final, enables us to look at the original papers in the case. On the diseño is found the house of Alviso nearly opposite the principal house of Higuera, and at the foot of the same range of hills. Crossing this range of hills the diseno shows a
350 valley in which is a sausal, and beyond another range of hills which bounds the diseno on that side. On reference to Stratton's map, Alviso's house is laid down at the foot of a range of hills, crossing which a sausal is reached, situated in a narrow valley, and beyond the range which bounds the official survey. And on this range is found a tree "known as a landmark," situated as shown on the diseno, not on the highest part of that range, but some 300 feet lower than a peak a short distance from it. And the proportionate extent of the valley between the two ranges to that of the plain is, as shown by Stratton's map, represented on the diseno with great accuracy.

The espediente shows that a tract was granted by Governor Sola in 1821; and that afterwards Governor Alvarado granted an augmentation, and that both tracts are represented on the diseno, but without anything to distinguish that granted by Sola from the augmentation by Alvarado. This is explained,
351 however, by the testimony produced on behalf of the claimants.

Antonio Maria Pico, called by the claimants before the surveyor general, says in answer to the 4th question on direct examination: "Under the old grant the lomas muertas were the boundaries on the west, but the grant was afterwards augmented so as to include the lands on the plain."

The force of this testimony, given in behalf of the claimant, and by a man who had held office under the former government, and who was well informed upon the subject of granted lands, is strengthened by the diseno. If the tract granted by Sola, and of which possession was given, is to be taken as a tract 7,450 varas in length by 1,200 varas in width—that is, in this shape, [see original,] for the ambit of the measurement is not a square erected on the two lines measured, but the circuit or circumference of those lines—a reference to
352 Stratton's map will show that the valley in which is situated a sausal is measured so as to include the lower slopes of the surrounding hills about that length and width, and corresponds with the valley shown on the diseno, and which is represented as being completely enclosed by hills. The testimony of Pico, therefore, and the diseño, both show that the tract granted by Sola was the valley in which is situated the sausal, and the tract in augmentatation the plain lying between the low hills and the Penitencia creek.

If the decree of confirmation is to be construed by the opinion of the board, (though this may well be doubted,) the force of this view is still further strengthened. Judge Felch said:

"Long before his (Higuera's) application to Governor Alvarado he built houses in the portion of land claimed as an extension, and occupied the entire tract now claimed."

Is it not evident that the houses shown at the foot of the hills are
353 those referred to, and that they are on the portion of land claimed as an extension?

Judge Felch proceeds: "This petition to Alvarado shows that he had

thus enlarged the borders of the land occupied by him, and asserts that he did so with the approbation of the ayuntamiento of San José."

Now, the authorities of San José had no jurisdiction beyond the "lone tree known as a landmark;" consequently, the land of which they give Higuera permission to occupy, must have been to the west of the ridge on which that tree is situated.

On referring to Higuera's petition, we find that, having obtained the grant from Sola, and the possession "of the place (paraja) named the Tularcitos," he wishes "to obtain the approbation and ratification of the same lands, together with the augmentation as represented in the drawing or map annexed, which part I occupy with the consent of the ayuntamiento," &c.

Which part—that is, the augmentation he desires—he occupied at the
354 date of his petition. The houses at the foot of the hill, and the only houses shown on the diseño, show he meant the plain beyond all doubt. Besides, unless this is so, how could he have been brought in conflict with Alviso, for it was the augmentation that conflicted with the land asked for by Alviso, as the diseños of the latter show; for the line on the side next Higuera is drawn more than half way between the two houses of Higuera and Alviso.

Judge Felch further says: "The map is proved by the testimony to be a correct delineation of the premises, and the lines as drawn on the east and west sides are evidently designed to represent the lines of the premises; but on the north and south, while some natural objects are named, there are no lines to show precisely how far the land extended."

Here we have the explanation of the causes in the decree; for Judge
355 Felch, in his opinion, having misstated the points of the compass, the mistake naturally enough was also made in the decree. The land commissioners generally drew the decrees themselves, which duty devolved upon the judge delivering the particular opinion.

Where, therefore, the decree says: "Beginning at the principal house standing at the foot of the hill, and running thence northwardly to a lone tree," it means the northwardly of Judge Felch; that is, eastwardly, in fact. Where the decree says from the lone tree east, along the sierra, to the line of Alvise, it means south in fact, and so on through the description.

Can there be any doubt as to the true intent and meaning of the decree of confirmation?

As to the second ground, that the facts found by the court are not sustained by the evidence, nothing need be said in this answer. The opinion of the court plainly and clearly speaks for itself.

356 As to the third ground, that the court disregarded the parol evidence of the possession given of the tract conceded by Sola, it is evident that all parol testimony conflicting with the plain calls of the grant by Alvarado, and the diseño upon which it was made, should be disregarded. It is not necessary at this day to caution the court against the loose declarations of Mexican witnesses made under oath in these cases. The diseño shows the land petitioned for and granted. If we can identify the tract shown by it, that is the tract to which the claimants are entitled, and no other.

January, 1862.

JNO. B. WILLIAMS.
In aid of Dist. Att'y.

Endorsed: Filed January 25, 1862.

W. H. CHEVERS, *Clerk.*

357 *Opinion approving survey on rehearing.*

United States district court, northern district of California.

THE UNITED STATES *vs.* THE HEIRS OF JOSÉ HIGUERA. } No. 228. "Los Tularcitos."

The official survey having been brought into court on objections filed by the claimants, the cause was at the last term heard, and a decree entered approving the survey.

A rehearing having been granted, the cause has been reargued and submitted for decision.

I have attentively considered all that is urged in the brief of the counsel for the claimants, but have failed to perceive any reason to doubt the correctness of my former opinion.

It is urged in the brief referred to that the survey approved by the court is not in accordance with the decree of the board.

The decree is as follows: "Beginning at the back side of the principal
358 house on said rancho, standing at the foot of the hill, and running thence northwardly to a lone tree on the top of the sierra, (which tree is known as a landmark,) thence east along the sierra to the line of the land known as the rancho of José Maria Alviso; thence southerly along the west line of said Alviso's rancho till it intersects the Arroyo de la Penitencia; thence up said arroyo to an estuary, and from this point to the place of beginning."

It is evident that in this description the courses of the lines have been mistaken.

From the back of the house to the lone tree the course is not north, but very nearly east; the line along the sierra is south, and the line of the rancho of Alviso is west.

The description in the decree was evidently taken from the deposition of Doña Carmen Sibrian de Bernal, who has fallen into the same error.

The lone tree mentioned is obviously the tree represented on the diseño,
359 and also on the map of the pueblo lands of San José. It is referred to by nearly all the witnesses as a noted landmark, and is described by Mrs. Bernal as visible from Higuera's house on the plain. There can be no doubt as to the identity of this tree. It stands in a nearly due east direction from the house.

It is clear that the second line was intended to be run at right angles to the first. It is described as running "east along the sierra to the line of Alviso." But the direction of the sierra is north and south, and the rancho of Alviso lies immediately to the south of that of Higuera. If, therefore, the 2d line be run "east," as the decree directs, it will not be at right angles to the first line, which terminates at the lone tree, but will be the production of it; nor will it run "along the sierra," but across it, nor can can it reach the line of Alviso.

It is clear that "south" should be substituted for "east" in the description of this line.

The same error occurs in the description of the third line. It is
360 described as running "southerly" along the line of Alviso's ranch till it intersects the Arroyo de la Penitencia. But the line of Alviso is west from the sierra to the Penitencia. On a southerly course the Penitencia could not be reached. The true course of the line described, and which having been settled at an early period by agreement between Higuera and Alviso, is not disputed, is from east to west.

Correcting, then, this obvious error in the courses of the lines described in the decree, it would seem that it describes the limits of the tract intended to be confirmed with entire precision.

It is suggested in the brief of the counsel for the claimants that the "lone tree known as a landmark," mentioned in the decree of the board, is not the lone tree visible from the plain, and identified by the witnesses. But there seems to be no foundation for this idea.

The only lone tree spoken of by the witnesses is that on the first range
361 of hills. It is evidently the one referred to by Mrs. Bernal as visible from Higuera's house. It is represented on the map of the pueblo lands of San José as forming the boundary mark on the northeastern corner of the extensive tract claimed by that pueblo.

It is not pretended that any lone tree known as a landmark is found on the range of hills beyond the Calaveras valley, nor is the survey contended for by the claimants bounded by any such tree; on the contrary, it runs to a rock called the "Piedra Azul," not mentioned in the grant, diseño, or decree.

It is incontestable that the tree referred to in the decree is that spoken of by almost all the witnesses, and especially by Mrs. Bernal, on whose deposition so much reliance is placed by the counsel for the claimants.

But it is said that the board evidently intended to include the Calaveras valley in the tract, and to designate some other tree than that spoken of
362 by the witnesses, because the northern line is described as extending to a lone tree "*on the top of the sierra*," and the eastern line as running thence "along the sierra;" the term *sierra*, it is said, plainly referring to the range of hills beyond the Calaveras valley. It seems to have been forgotten that Doña Carmen herself describes the lone tree in the chemisal precisely in the language of the decree, viz: as on the "top of the sierra;" and this tree, she says, was visible from the plain.

Several witnesses have testified that the first range of hills was always called "cerros," and never "sierra." But a conclusive answer to this testimony is found in the fact that in the diseño of the adjoining rancho of Alviso the same range of hills, with the houses of Higuera and Alviso at its foot, is unmistakably delineated and inscribed Sierra Alta.

That this tree spoken of by Doña Carmen was the one situated on
363 the first range of hills is imputedly admitted by the counsel for the claimants, for he contends that Mrs. Bernal testifies that the line ran past this tree to the sierra on the other side of the Calaveras valley. As the language of the decree is almost an exact transcript of that used by Mrs. Bernal in her deposition, it is impossible to suppose that the board did not refer to the same tree as that mentioned by her, especially as no other lone tree known as a landmark is spoken of by any of the witnesses.

It is clear, then, that from the terms of the decree, that the line could not have been intended to be run past or beyond the tree in the same direction. The course of the first line is described as "north to the tree," and the 2d line is to be run "thence east along the sierra to the line of Alviso." The direction by compass is erroneously given, as has already been explained; but the intention obviously is to draw the second line at right angles to the first. It
364 could not have been meant to be merely the production of the first, for in that case it would not run along the sierra, nor could it ever reach the line of Alviso.

I confess myself unable to perceive how, after ascertaining the lone tree mentioned in the decree of the board, the survey can be made under that decree in any other manner than by running from the tree south along the sierra on which it is situated to the line of Alviso. This decree was obtained by the claimants; it has been accepted by them as final. It defines the boundaries of the tract with great precision, and it would seem unreasonable to permit them now, in a proceeding to ascertain the correctness of a survey under that decree, to disregard it entirely, and to establish new boundaries by which the extent of the tract will be more than doubled.

But it is said that the deposition of Mrs. Bernal, on which the decree was evidently founded, shows that the northerly line was continued past the
365 tree and beyond the valley of the Calaveras.

The answer already given to this suggestion would seem to be sufficient, viz: That the board clearly adopted the tree as a corner, and not as an object, in the line of the northern boundary. But on referring to the deposition of Doña Carmen, it is be no means apparent that the line described by her is that contended for by the counsel.

She states that Higuera pointed out to her his boundaries: that the line ran from the back of the house to the lone tree; from that tree to the other side of the Calaveras, and from beyond the Calaveras, by the rear of Alviso's house, to the Arroyo de la Penitencia; thence to an estuary, and thence to the point of beginning.

It appears that in the first range of hills is a noted peak, of a conical shape, known as the Cerro de la Calabera, or de las Calaberas.

If from the tree the line be run as directed in the decree along the sierra to the line of Alviso, it will pass not far from this peak. I think
366 it most probable that this "Cerro de las Calaberas," and not the valley, was referred to by the witness.

If she meant that the line was to continue in the same direction from the tree across the valley of las Calaveras to the sierra beyond, she wholly fails to indicate the eastern boundary of the tract, and yet it is evident that she meant to describe boundaries which would enclose it on all sides. "From beyond the Calaveras," she says, "the line continues down by the rear of Alviso's house to the Penetencia." But this line is parallel, or nearly so, to the line from Higuera's house to the tree; and if the line which "extended" beyond the Calaveras is this latter line produced, it is evident that no eastern boundary whatever is mentioned.

It seems clear to me that the witness, like the board, intended to describe a line running from the tree to Alviso's line, and thence along that line to
367 the Penitencia, forming, as she says, a tract somewhat like a parallelogram.

That such was her meaning is apparent from her answer to the 4th cross-interrogatory.

When asked to state particularly each landmark of the boundaries forming the rancho, she says:

"From the tree I have mentioned all along the top of the sierra"—precisely as described in the decree. She does not say from the tree across the sierra on which it is situated, across the valley of the Calaveras, to the sierra on the opposite side.

The report by Peralta of the judicial measurement made by him, under the order of Sola, has been referred to, as showing that Higuera's possession extended across the Calaveras valley. Admitting the view taken by counsel, with regard to that measurement, to be correct, and that Peralta laid off a tract 1,200 varas wide by 7,450 varas in length, it is highly improbable that the lines were run in the directions stated by him; that is, 7,450 varas from east
368 to west, and 1,200 varas from north to south. The place to be measured was, as Peralta declares, Los Tularcitos.

The Tularcitos is a narrow valley, running nearly northwest and southeast. Its width is not far from 1,200 varas, while its length, as shown on Stratton's topographical map, is considerably more than a league.

It would seem, therefore, that this must have been the place measured off by Peralta. It is in the highest degree improbable that, under the name of Tularcitos, he intended to give possession of a long and narrow tract running nearly at right angles to the little valley known as the Tularcitos, with no natural boundaries on any side, and running over the hills and across another valley a

distance of nearly and a half, while its width was less than ¼ of a league. The fact that Peralta says he measured 7,450 varas from west to east, only proves that he fell into the same error as that committed by the
369 draughtsman of Higuera's diseño, by many of the witnesses, and even by the board itself.

But if Peralta measured from the point of beginning 1,400 varas to the NW. and 6,050 to the SE., we can understand the origin of the dispute between Higuera and Alviso, and which, at the governor's suggestion, was amicably arranged by the adoption of an agreed line: whereas, if the tract of Tularcitos was measured by Peralta from west to east 7,450 varas, by only 1,200 varas in width, it could not have encroached on the limits of Alviso.

It is unnecessary to recapitulate the various reasons presented in the former opinion of this court for the conclusion that the narrow valley represented on the diseño is not the valley of the Calaveras.

The most important is the fact that the lone tree is represented as situated on the east and not on the west side of the valley, clearly indicating the valley to be on the west of the range on which the lone tree stands.

370 It is strenuously urged by the counsel for the claimants that the court, in seeking to reconcile the indications of the diseño, has assumed, without proof, that the Tularcitos of the diseño is not intended to indicate the valley of that name.

It was not supposed by the court that the place called Tularcitos, which was measured off to Higuera, and where he built his houses, was any other than the long and narrow valley heretofore described. But from the representation on the diseño of a small square inscribed "Viña," near which the word "Tularcitos" is written, without any apparent attempt to indicate a valley, it was supposed that the spot intended was probably that marked "Tularcitos," on Stratton's map, where tulares are, in fact, found, and which corresponds in its relative position with regard to the houses of Alviso and Higuera, and other objects represented on the diseño, much more nearly to the place inscribed Tularcitos than does the valley to which that name belonged.

371 In the petition of Higuera for a ratification of the Sola grant, and for an augmento, he says that he "obtained a grant for the place called Tularcitos, and also the possession, and wishing to procure the approbation and ratification of the same, together with the augmento as represented in the map annexed," &c.

The possession obtained by him was, as we have seen, of a tract 7,450 varas long by 1,200 wide, and this was known as the place called Tularcitos. The augmento desired was to be on the plain towards the bay, and the map represented both tracts.

It is highly improbable that he should not even have attempted to represent on his diseño the valley of Tularcitos, which had been measured off to him, and in which he resided, but contented himself with writing the word "Tularcitos" at a place where the diseño affords no indication of the existence of a valley, and which appears to be a part of the hills. On the map of the
372 lands of San José, which embraces a very large region of country, the small valley of the Tularcitos is distinctly delineated. It is hardly conceivable that its owner, who resided in it, should have wholly neglected to represent it on a diseño on which he professed to indicate the land he solicited. But it would be quite natural for him to inscribe with the name of Tularcitos the patch of tulars which Stratton's map shows is found in nearly the exact position of the Tularcitos of the diseño.

If this view be correct, the valley to the east of the place marked Tularcitos is evidently the Tularcitos valley which had been granted to Higuera, and which, in size and relative position, it represents with some accuracy, the "cha-

mise" or lone tree being found on its eastern side, and the word "Calabera," indicating the cerro of that name, also situated on its eastern side.

373 But if this really be intended to represent the Calaveras valley, the diseño is almost, in this respect, as inaccurate as it is in its representation of the Tularcitos valley by a small square figure marked "Viña," near which the word Tularcitos is written. It is said that a stream is represented on the diseño as flowing through the valley. But it seems to me that the line of the base of the hills and not a stream is intended to be indicated, and the brook which flows through the Calaveras valley flows through its centre and not at the base of the hills beyond it, as the diseño represents, if the line in question be intended to indicate a brook.

The diseño represents the valley as closed in by the hills towards the north; but the Calaveras valley receives towards the north the considerable stream called the Calaveras river, of a much larger size than the brook which flows through the valley, but which is wholly omitted on the diseño. And yet

374 if the survey contended for by the claimant be adopted, and the Piedra Azul taken as the northeastern corner, this stream must be crossed and a considerable portion of it included within the tract.

I shall refer but to one other consideration in support of the view I have taken.

It is admitted that the augmento solicited was towards the plain. The right, if any, to the Calaveras valley must have been derived under the first grant of Tularcitos by Governor Sola.

The report or *informe* of Louis Peralta shows that the land solicited by Higuera was within the domain of the pueblo, but that it might be granted.

The boundaries of the land claimed by the pueblo are distinctly delineated on the map so often referred to. They embrace the Tularcitos valley, but not that of the Calaveras.

The boundary line is drawn from the lone tree south, along the crest

375 of the first range of hills, while the plan Calaveras is represented as lying beyond it. If, then, the Calaveras valley composed the larger portion of the Tularcitos grant, the report of Luis Peralta, by whom the possession was given, the order to Peralta to make the petition known to the authorities of the pueblo, that their objections might be heard, were all founded on error; for almost all the tract was without the limits of the pueblo.

It seems far more reasonable to suppose that the governor and officers of the pueblo knew where the tract solicited by Higuera was situated, and that the place called Tularcitos was in fact within the limits of the pueblo.

The subsequent augmento could not have been intended to enlarge the boundaries towards the east, for it is clearly proven that the extension asked for was towards the bay.

376 On the best consideration I have been able to give to this case, I am satisfied that the opinion heretofore delivered was correct, and that the official survey should be approved.

Endorsed: Filed June 24th, 1862.

W. H. CHEVERS, *Clerk.*

377 *Order that decree of Nov.* 26, 1861, *stand as final decree.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Wednesday, the 25th day of June, in the year of our Lord one thousand eight hundred and sixty-two.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
HEIRS OF JOSÉ HIGUERA. } No. 228.

This cause came on to be heard upon a petition by the claimants, and an order granting the prayer of said petition for a rehearing; and counsel for the respective parties having been heard, and due deliberation had in the premises, it is by the court now ordered, adjudged, and decreed, that the final decree of this court, duly entered November 26, 1861, stand as the final decree of confirmation in this cause.

OGDEN HOFFMAN,
U. S. Dist. Judge.

378 Endorsed: Filed June 25th, 1862.

W. H. CHEVERS, *Clerk.*

Order granting appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Tuesday, the 25th day of November, in the year of our Lord one thousand eight hundred and sixty-two.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
HEIRS OF JOSÉ HIGUERA. } No. 228.

This cause having been heard on objections to the survey and location of the land confirmed to the said claimants, and the court having approved said
379 survey and location by its decree rendered November 26, 1861; and having by its order of June 25, 1862, upon a rehearing granted January 8, 1862, directed that said decree of November 26, 1861, stand as the final decree in the cause: now, on application of S. O. Houghton, esq., of counsel for claimants, it is ordered that an appeal in behalf of said claimants from said decree be, and the same hereby is, granted, and that a certified transcript of the pleadings, evidence and proceedings in said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed November 25, 1862.

W. H. CHEVERS, *Clerk.*

380 I, William H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify that the hereunto annexed and foregoing pages, numbered from one to three hundred and eighty, (380,) both inclusive, contain a full, true, and correct transcript of the record from the board of U. S. land commissioners, and of the pleadings, opinions, orders, depositions, decrees, and maps filed in this office in the case of The United States, appellees, *vs.* The Heirs of José Higuera, appellants, No. 228.

381 In testimony whereof I have hereunto set my hand and affixed the seal of said court this 8th day of January, A. D. 1863, and of our
[SEAL.] Independence the 87th.

W. H. CHEVERS, *Clerk.*

IN THE SUPREME COURT.

THE HEIRS OF JOSE HIGUERA,
vs.
THE UNITED STATES.

[No. 115.]

December Term, 1864.

This is an appeal from a decree of the District Court for the Northern District of California, approving the survey and location of a tract of land lying in said Northern District, called "Los Tularcitos," finally confirmed to the heirs of Josè Higuera, deceased.

The title is based on two grants to Josè Higuera, the father of the appellants.

The first was made by Governor de Sola, 4th October, 1821, under which possession was delivered to him 23d October, 1821, (see pp. 10 to 12.) The second grant was made by Governor Alvarado 14th February, 1839, (p. 15, 17.) The claim was confirmed by the Board of Commissioners 28th November, 1854, (p. 19,) and affirmed by the District Court 12th December, 1856, (p. 21,) and survey ordered.

The first survey of the land was made in 1857, under instructions from Surveyor General Hays, (p. 72 and 63,) but was changed by his successor, Mandeville, (p. 70,) and the survey was then made which gives rise to the present controversy. The appellants filed their objections to this last survey in the District Court, and it was ordered into court for adjudication, and was pending in said court at the passage of the act of 14th June, 1860, (12 Stat. at Large, 33.)

On the 25th June, 1862, the District Court having overruled appellant's objections, entered a final decree confirming the said survey. (p. 101,) [which had been previously ordered by the court,] (p. 84.) From this decree the appeal is prayed, and the appellants assign as errors:

First. That the decree is manifestly against the evidence in the cause.

Second. That it assumes the existence of facts necessary to its support, of which there is no evidence.

Third. That it rejects and disregards the proof of the extent of the occupation of Josè Higuera.

Fourth. That it approves a survey that does not embrace one-half the land granted to Higuera, and does not correspond with the decree of confirmation.

The decree of confirmation will be found at page 19. It contains several distinct elements of description. It declares the land confirmed to be the land formerly *occupied by José Htguera.* After reciting certain boundaries, it concludes: "*Reference to be had, for more particular description, to the expediente, and the map constituting part of the same, which are on file in this case.*"

The boundaries given in this decree are clearly erroneous, for they cannot be connected with the calls. It was, therefore, competent for the complainants to prove what land was formerly occupied by Josè Higuera, so as to fix the location and correct the errors in these boundaries. They have done this by the fullest proof, and the Court has rejected or disregarded it, and in this there is error.

At page 97 the court says: "This decree was obtained by the claimants. It has been accepted by them as final." This is true; but what land is embraced in the decree?

Further, the opinion proceeds: "It defines the boundaries of the tract of land with great precision, and it would seem unreasonable to permit them now, in a proceeding to ascertain the correctness of a survey under that decree, to disre-

gard it entirely and establish new boundaries, by which the extent of the tract will be more than doubled." And yet in this same opinion, the court proceeds to alter the courses mentioned in the decree, and the description of the land, so as to make it correspond with the survey. The claimants do not seek to impeach the decree of the District Court—but the survey, and to make it correspond with the plain language of the decree.

In the petition of Josè Higuera, (p. 15,) asking for a grant of an augmentation to his former concession made by de Sola, he describes the land so solicited, as shown on the map (disèno) annexed, which he has occupied for more than twelve years with the permission of the Ayuntamiento of San Josè. Gov. Alvarado grants the land "*he asks for.*" If the petition and the grant be taken together, there can be no doubt about the land; it was certainly that represented on the disèno and occupied by Higuera.

In the decree of the Board, they confirm "*the land formerly occupied by Jose Higuera,*" and refer expressly to the expediente, including, necessarily, the petition and the map. And they use these words in their opinion: "The land to which title was solicited of Alvarado, as designated in Higuera's petition, involved two elements of description:

First. It was the land then occupied by the petitioner, and which he had occupied more than twelve years.

Secondly. It was that represented on the annexed map, (page 19.)

The language of the decree of confirmation, and the opinion, is the same. In a case of doubt, the doubt would have been solved by a reference to the opinion and removed by the evidence of the location and extent of that occupation.

The courses, distances and calls in the decree cannot be satisfied. Yet it is clear that the Board and the District Court intended to confirm to the heirs of Josè Higuara," the lands formerly occupied by" him, described in hie petition, and

granted by Alvarado. The only means of carrying into effect the decree was by evidence of the extent and boundaries of that possession.

The evidence of Twitchell as to the survey first made by him (p. 63,) is full of meaning, and approximates certainty as to the lands thus occupied, and his first survey, before he was enlightened by the subsequent positive instructions of his superior, is persuasive evidence of the land thus occupied and intended to be confirmed.

But the topographical map prepared by Stratton, employed by the squatters on this very land, and introduced by the opposing parties, (p. 44,) and which is shown to be a correct representation of the topography of the tract claimed, is conclusive of this question when examined by the light thrown upon it by the parol evidence.

If the disèno attached to the petition to Alvarado is compared with this topographical map, they will be found to contain certain localities which are incontestably proven to be identical, and remove all doubt as to the question of the extent of "the possession" and true boundaries of the claim of Higueras, intended to be confirmed by the Board, and the decree of the District Court. (See the deposition of Josè Castro, p. 7.)

The Arroyo de la Penitencia and the Estero; the rancho of Josè de Maria Albisu, (Alviso); the houses on the north, with the valley not named, but corresponding with the Arroyo Calera; the narrow range of hills on the east side of the disèno; the open space marked "vina," and "Tularcitas;" the second range of hills to the east, and the plains between the two ranges of hills, correspond with the Calaveras valley of Stratton, and the official map of Mandeville, No. 2; the "Sausal and Posa," the stream running in a northerly direction, spoken of by Galindo, (p. 35,) and the word "*Calaberas*" written a little to the east of this stream, are of themselves, without reference to other points of lo-

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cality, sufficient to identify the two, and fix the second valley to the east, as within the boundaries of this claim. But, if we proceed further, we find the word "Chemisal" (a thicket of brush) toward the north-east corner of the diseño; and upon either side of the line which represents the base of the Sierra on the east side of the Calaveras valley, some trees are marked. These correspond with the evidence of Antonio Maria Pico; (p. 37.)

All the witnesses to whom the disêno was shown, recognize it as a rough delineation of the tract. No doubt the the map prepared by Stratton, with all the aid, art, and science could afford him, is not only more picturesque but more accurate in its proportions, especially as to the extent of the valley, and the altitude and character of the hills and mountains, and in the relative positions of the several distinctive localities. But it does not convey a more accurate idea to the untutored minds of the witnesses familiar with the different localities, with the face of the country, and the extent of the possessions of Higuera, than the rough sketch of the rude ranchero accompanying Higuera's petition, and which was deemed by Alverado sufficiently accurate to found a grant upon it. The eastern boundary of the disèno is not *accurately* defined; nor are the others. Both are to be found by proof, either of survey, occupation, or judicial possession. All of these we have. And our first position will be to show that José Higuera, long before the occupation of California by the United States, had possession under a claim of title from the Mexican Government of the lands now claimed by his heirs.

Prior to the decree of augmentation, his boundaries were: On the west by the (Estero,) estuaries of the Bay of San Francisco and the Arroyo de la Penitencia; on the north by a line running from the Esteros to the Arroyo de la Calera; thence up the said Arroyo to the "lone tree" on the top of the hill, east of the Tularcitos valley; thence east-

wardly to the "Piedra Azul", (Blue Rock,); thence along the Sierra that bounds the Calaveras Valley on the east to the place called "Los Bueyes," at the point known as the "*Burranea,*" (land slide); thence northwardly to the "Arroyo del Monte de los Coches"; thence down said stream to the land of Alviso; and thence along the agreed line between Higuera and Alviso to the Penitencia Creek." This tract is identified by every Spanish witness on both sides. Even Josè Romero, (p. 36,) Agatin Ruiz and Francisco Alviso, (p. 62,) witnesses for the United States, although they pretend Higuera pointed out other boundaries, admit he *occupied* for a great many years the whole of this land.

These boundaries are represented on the disèno. The "Piedra Azul" is a little north of the word "Calaberas;" "Los Bueyes," a short distance south of the same valley, as written on Stratton's map. Josè Hernandez (p. 49,) fixes these as the approximate position of those points. They are within the tract delincated on the disèno, as are all the other points or calls, just mentioned.

These positions are fully sustained by the evidence of Juan B. Alvarado, (p. 4,) Josè Castro, (p. 5,) Halario Galindo, (pp. 34, ans. 8, 9, 12, 13, 14, 18.) Antonio Pico (pp. 36, 37,) Antonio Chaboya (p. 45, ans. 6 and 7—the vina was in the Tularcitos Valley,) José Antonio Alviso, (p. 52, ans. 8.)

These witnesses show that the open space on the right hand side of the disèno is the Calaveras Valley. The Sausal in the southern end, and the "Posa" in the central part, and the little stream running from it, are all marked on the desèno, and in the Valley of the Calaveras; and on the north there was much "chemisal" and large trees; that the Calaveras Valley is separated from the Tularcitos Valley by a range of low hills; the vineyard (vina) was in the Talarcitos Valley. And so as to the Laguna de los Tularcitos. It is identified by the witness Chaboya (p. 45,) as the pond

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marked on Stratton's map, "Tularcitos" in green crayon, and 560 feet, in red. Further west, and separating the Tularcitos Valley from the plain, is another range of low hills (or rather rolling ground,) and in the plain at the base of those hills, is found the "Huerta" and houses of Josè Higuera; near where the Arroyo Calera issues from the hills, and to the north of the Arroyo del Monte de los Coches is shown the house of Josè Maria Alviso, at the base of the hills. All these points are in the disèno, and in Stratton's map.

No doubt the disèno does not proportionately represent the dimensions and extent of the valley, as does Stratton's map. And from the former, it would appear that the extent of the plain, to the west of the high hills, is greater than that to the east, while the fact is not so. The court, below, has given great importance to this fact. The one is the result of a survey conducted on scientific and mathematical principles; the other a rough sketch made by an uninstructed and rude pioneer in the wilderness. But there is a remarkable resemblance in the outline, as is sometimes found between a rough profile and a finished portrait, by which they can be identified as intended for the same person. The diseño is indeed superior to many on which grants have been made and confirmed; for it gives the general courses of streams and hills, and the localities by which certain fixed points can be ascertained. The District Court has given no heed to this very clear proof; have disregarded or rejected it. If the diseño embraces the same land covered by Stratton's map, the survey is erroneous.

But this is not all,—the pard proof of the land possessed and occupied by Josè Higuera, is conclusive.

Josè Antonio Chaboya, (p. 45, ans. 2,) Josè Antonio Alviso, Pedro Chaboya, (pp. 37, 38,) Fulgencia Higueras, (pp. 53, (pp. 32 ans. 18,) Galindo, (pp. 33, 34, ans. 5, 6, 7, 14, 15,)

54, also, ans. 23, 26, 28,) Josè Romero, (p. 56, ans. 13, 14, 18, 19, 17, 21, 22,) Francisco Alviso, p. 60, ans. 4, 5, 32, 33, 35, 36, 43 to 50,) Agatin Ruiz. (p. 57, ans. 8.) This witness is introduced by the United States. He is discredited, by his own contradictions as to his age, (pp. 28 and 57,) and by witnesses who impeach his credibility; yet, he is forced to admit the possession of Higuera, while he is, himself, a squatter on the identical land.

All these witnesses—witnesses on both sides—concur in establishing the possession of the Calaveras Valley in Josè Higuera, long before the grant of Alvarado.

It follows that, as this valley is proved to be laid down on the diseño, and to have been occupied by Higuera before the grant, it should be included in the survey. Yet the whole of this valley is excluded, notwithstanding the opinion of the court, 25th November, 1861, in which it is said, the diseño is "our chief if not our only guide;" and again, "nor ought parol testimony as to the boundaries, as claimed by Higuera, or as understood by his neighbor, be received to extend the tract *beyond* the limits designated in the diseño," (p. 81,) although the decree confirms to his heirs "the land formerly occupied by Josè Higuera."

The proof is not offered "to extend the tract beyond the limits designated in the diseño," but to show that the lands they claim are represented in it, and thus satisfy the requirements of the court.

The opinion of the court shows the error which led to the final decree. It says, (p. 82,):—"It is contended by the claimants that the narrow valley represented on the diseño is the valley of the Calaveras Creek." The fact is, they claim that the long valley on the right, or eastern side of the diseño, is the Calaveras Valley or plain, as it is sometimes called by the witnesses. The Calaveras Creek shown on Stratton's map, No. 1, does not run through this valley, and only touches it near the northeastern corner, a few hun-

dred yards from the Piedra Azul. There is a small stream running through the valley, without name, nearly north.

Again, (p. 82):—"No inaccuracy which we can attribute to the draughtsman of the diseño, will justify us in supposing that by the "Tularcitos" of the diseño, the "Tularcitos" of Stratton's map was intended to be designated."

Yet the testimony of Chaboya (p. 45, ans. 3,) Alviso (p. 31, ans. 9,) Galindo p. 34, ans. 8 and 9, x5,) Twitchell (p. 64, ans. 4,) shows conclusively that they are identical; the vineyard and the laguna are proved to be in the "Tularcitos Valley," and there is no proof placing them any where else.

Stratton (p. 43) was employed by the squatters to make his map. He has marked on it a pond of water east from the houses of Higuera, at the base of the little hills. It is proved there is no such pond there. He has marked the place *Vina* and *Tularcitos*, and says, (p. 41, ans. 9):—"Where I have marked Tularcitos the ground is of a wet and marshy character. I have no hesitation in saying that it (the Tularcitos of the diseño) is in the vicinity of the first pond to the eastward of Higuera's house. In his next answer he undertakes to fix, from the diseño, the initial point of the judicial measurement made by Peralta in 1821. The diseño was made in 1838. The two answers show that he was making a case. In like manner he converts the Tularcitos Valley of the diseno into the Calaveras Valley, and marks it with the word *Calaveras*. In answer 35, p. 44, he admits his first knowledge of the locality was in 1857. Yet the court adopted the places marked by him Vina and Tularcitos, where his pretended pond is placed, as the Tularcitos of the diseno, (p.——,) in opposition to the clearest uncontradicted proof that there was no pond there.

Again: the opinion, after referring further to the diseno, assumes that the open space on the right hand, between the range of hills, was not intended to represent the Calaveras Valley, and sustains this view by reference to the proof that

a peak near where the "lone tree" appears is called Calaveras. This assumes that a lone tree is shown on the diseno on the north-eastern corner of the Calaveras Valley. This is not so. There is no lone tree shown on the diseno on that range of hills, nor any trees at all at that place.

But the identity of the Calaveras Valley of the deseno, and that of Stratton's map, is shown by other equally conclusive proof:—First. It is the second valley in going east from the plain; second, to reach it, two ranges of hills are crossed, and it lies northeast of the valley in which the Laguna of Tularcitos is found; third, the witnesses prove the existence in the Calaveras Valley of a "sausal" at the south end; of a "posa" near the centre, and a small stream flowing therefrom to the north, "which sometimes goes dry;' and a sierra or high range of mountains on the east. The "sausal" and "posa" are not shown either on Stratton's or on the official map; but the small stream is shown on both. The absence of these points in the lapse of time between the date of the diseno and the making of the surveys, is fully accounted for by the intervening cultivation and improvement; the "sausal" was but a willow thicket, and the "posa," the head of a little stream.

The court, however, regards the chemisal or "lone tree" as the most conclusive indication of all, and confounds it with the several trees marked on the diseno near the word "chemisal." Clearly, if a lone tree had been intended as a boundary, a single tree would have been delineated, not several. And so as to the peak called "Calavera," if that had been intended it would have been shown in the range of hills; but the word is written in the plain, near the small creek.

A "lone tree" on the top of the sierra (which tree is known as a land mark) is called for in the decree at the end of the first line, and is referred to in the evidence of Bernal (p. 9, ans. 3.) as a boundary. It is obvious that the mistake in

the description in the decree originated here, for this testimony is referred to specially in the opinion of the board, (p. 19.) The great effort of the court has been to make that tree a corner as well as a boundary. With this view reference is made (p. 83,) to the map of the lands of the Pueblo of San Josē, exhibit Stratton, No. 2, to fix the "lone tree" on the top of the hills between the Calaveras and Tularcitos Valleys, and it is said "its position determines beyond dispute what range of hills was intended to be represented on the diseno." One thing is quite certain, no "lone tree" is exhibited on it, and therefore it is not very material where the corner of the San José lands is. That map shows the three ranges of hills, a tree on the second range, a noted land mark. The map was made in 1838. and Smith (p. 27) says it had in it a cross marked 1838. But there is nothing to connect it with the Tularcitos grant; nor does it tend in any way to remove the difficulty in fixing the boundaries of this grant, if the diseno and proof of possession accordant with it are either disregarded or rejected. The "lone tree" is a mark in the lines of the Tularcitos grant, but not a corner, as will presently be shown.

The court has been obliged to make a new description of the lines and boundaries; for by that given in the original decree it is impossible to enclose any land.

The decree will be found at p. 19. The "lone tree" is the end of the first line; "thence *east* along the sierra to the line of the land of Josē Maria Alviso." The point of Alviso land nearest to the "lone tree" is a little west of south. See exhibit Mandeville, No. 8, Stratton, No. 2. To run east, or along the sierra, never could reach Alviso's land. If we abandon the course and follow the call, the whole of the Tularcitos Valley will be left out, including the Laguna, where Higuena's first house was built, and where the vineyard was planted. It is conceded by all that this valley is to be included.

The place called the "sierra," where this line is to run east, is only "high oat hills" (see exhibit Mandeville, No 2)—that is, hills on which wild oats grew. The witnesses call them "lomas" (hills,) while "sierra" is a range of high mountains; and they speak of the "sierra" as lying east of the Calaveras Valley.—(See Alviso, Pico, Galindo and Chaboya.) Stratton's map shows the elevations of all the highest hills. The Laguna de los Tularcitos is 560 feet; the highest hill in the range south of the "lone tree" is about 1200. Its eems strange toc all these hills "sierra," when the next range is called by P. Chaboya "Sierra Grande."

The court below sees this line cannot be run, nor the call gratified. It cannot be run east, "*because*" it will not be at right angles with the first, but will be the production of it," (p. 96,) (that is precisely what was intended); nor will it run along the sierra, but accross it; " nor can it reach the line of Alviso."

In this perplexity the court refers to the deposition of Carmen Sibrian de Bernal, (p. 9.) But that does not sustain the assumption of the court, either, that the line from the "lone tree" was to be run at right angles or south. "The line ran from that tree to the other side of Los Calaveras." This ends the whole line—*the other side of Los Calaveras;* for she says, in continuation, "*from beyond the Calaveras* down to the rear of the house of Josē Alviso, that line continues to the Arroya de la Penitencia." With the light of the decree the description is complete, and embraces the land claimed by the appellants; extending the line east to the sierra, beyond the Calaveras, to where the trees are marked on the diseno, making the sierra the eastern boundary; then running south, as the decree has made it run, to the rear of Alviso's house; thence by the dividing line between Alviso and Higuera, as fixed by them; thence as by the other calls, to the beginning, completes the figure. She says, (x1,) "that the tract was in the form of a parallello-

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gram, two to three leagues in length, by one in breadth," and this corresponds with what the appellants claim, a litte over two leagues in length, and a little less than one in breadth.

But the line, as found by the court, does not correspond with that of the approved survey. The court finds that the second line should run at right angles and south. The survey runs it southeast, and in that direction it could never reach Alviso's land. And so as to the third line, the original decree runs it "southerly along the west line of said Alviso's rancho;" the court changes it to run "*west*." It will thus be seen that the court has given a new location, the lines of which are as follows: Beginning for the second line at the lone tree, running thence southeasterly along the range of hills between the Tularcitos and Calavera Valleys, until it intersects a line prolonged easterly from the northeast corner of the lands of Alviso, (which will be more than two miles east of Alviso's land, as shown by the maps,) thence westerly with said prolonged line to Alviso's north line; thence along said north line to the Arroyo Penitencia, &c. In this, the courses, localities and distances are as different from the decree as the figure is different from that described by Madam Bernal. She gives the north line to beyond the Calaveras, and the proximate length of the tract, but leaves the eastern boundary uncertain. Whether this arises from the imperfect report of her evidence, or because she thought it clearly indicated the Sierra to the east of the Calaveras to be the second or eastern line is not very material, as she gives the northern southern and western lines, and the figure, and length and breadth of the land. But it is quite certain that these lines and boundaries do not at all correspond with, or even approximate to the land embraced in this survey. Madam Bernal says, "from the lone tree, the line ran beyond the Calaveras." That completes the northern boundary line,

and then from beyond the Calaveras down the rear of the house of Josè Alviso to the Arroyo de la Penitencia." This gives the eastern and southern lines, but leaves uncertain the exact position of the eastern line; but it is "beyond the Calaveras," and we can fix the distance with tolerable accuracy, by other evidence in this cause.

Hitherto the discussion has been confined to the grant of Alvarado. and the proof in support of it. But when we refer to the de Sola grant of 1821, we find satisfactory evidence to show where this eastern boundary was.

The report of Luis Peralta, the commissioner of the Pueblo de San Josè, is on (p. 14.) The court, below, (p. 81,) says it is unintelligable. "No beginning point is mentioned, and it is evident that the lines at the lengths designated, cannot be connected so to enclose any parcel of land. We must therefore look to the diseño, which represents as well the tract conceded as the augmento solicited of Alverado, to ascertain the boundaries."

It is true, no beginning point is given by Peralta. But that point is clearly established by the testimony of Josè Antonio Alviso, (p. 32, ans. 14, 15, 16,) on the part of the claimants, and by Josè Romero, (p. 55,) on the part of the United States, to be a tree, *now standing*, not far from the Laguna, in the Tularcitos. This fact is not contradicted by any witness or fact in the case. Here is a fixed point, from which Peralta, (p. 14,) designated for him on the south 600 varas; on the north the same; on the west 1,400 varas; and on east 6,050 varas, which ambit embraces the said tract of Tularcitos, (see fiig. p. 90.) The witness, Alviso, says "the line run to the east from that tree, reached to the base of the Sierra, (main ridge,) on the east side of the Calaveras Valley."

Here, then, we have the initial point established, and this survey run according to the settled practice of the country, as prescribed for laying off lands in the Ordenanz de Tierras y Aguas, (cap 10.)

By this ordinance the judge is required to fix the centre or initial point, then to measure 600 varas *a los cuatro vientos*, (to the four winds, meaning the four cardinal points of the compass,) and, at the end of these lines, to draw purpendiculars, so as to enclose the required area. It is evident that Peralta adopted this rule; and we ask no more as to the northern, eastern and southern boundaries—that and they may be run so as not to interfere with any coterminous pro-prietor.

This would seem to be conclusive of the matter. Indeed, the judge, below, felt the weight of these facts, and at page 98, he seeks to get rid of them by arguments made from a *state of facts which do not exist.*

The scale of Stratton's map ex. No. 2, is twenty chains to an inch. It shows that the Tularcitos Valley, instead of being "considerably more than a league" in length, is not more than one quarter of a league, and its greatest breadth, instead of 1,200 varas is not more than half a mile, and the average much less than that.

Twitchell, (p. 64,) confirms the fact that the judge's estimate is three times too much for the length, and yet he makes it larger than Stratton's map.

The court thinks it "*highly improbable*" that the lines were run east and west, and north and south. Yet we produce the official report of the officer corroborated by the testimony of two eye-witnesses of the fact; and these supported by proof of possession corresponding with this survey.

The court thinks if the lines had been run, as stated by Peralta, Higuera never could have interfered with Josè Alviso. Yet it is clear from other parts of the opinion, and from all the testimony on the point, that the interference between them had nothing to do with the de Sola grant, but grew out out of the augmentation made by Alvarado, including and extending to the *west* of the de Sola grant. This is put beyond doubt by the facts that the whole rancho

of Alviso lies west of the first range of hills, as is shown by exhibit No. 8, and Sratton's exhibit No. 1, and by the document signed by Juan B. Alvarado of San Josè, (p. 17,) by Higuera's petition, and by the fact that Higuera's grant, under de Sola, was in 1821, and Alviso's in 1833, so that the grant to Alviso, could not prejudice the right of Higuera.

But suppose the court is right in assuming that Peralta did not run his lines east and west, but southeast and northwest. The initial point is still standing, and is fully proved, Then the claimants are clearly entitled to run 6,050 vares to the southeast, by 1,200 wide. The decree clearly covers the tract surveyed by Peralta, and upon what principle can the court change it and give a different tract? Yet, it is indisputable that the survey approved by the court, is for an entirely different tract; and equaliy so from the one we claim.

If Peralta did run the lines as he says in his report, and as the witnesses testify, then taking the true point of beginning to be where those witnesses place it, near the small lake and above houses, marked on Stratton's map, and running the 6,050 varas east, it will be seen that the eastern boundary is where we claim at the foot of the Sierra Grande.

In conclnsion. The true construction of the fifth section of the act of 1860, gives the court power to take testimony and settle "the true location of the claim."

In this case, no more is necessary than to enforce the decree of cofirmation, that being sufficiently clear in its terms to cover the whole tract demanded by the claimants.

The grant by de Sola extends beyond and includes the greater part of the Calaveras Valley, according to the testimony of Bernal, Alviso and Romero, and the survey of Peralta; and the possession of that tract by Higuera, is sustained by all the witnesses who speak, to the fact. The augmentation by Alverado extends it to the west, so as to

bound on Alviso, and thence by admitted boundaries to the beginning. The proofs are full to satisfy the court as to "the true location of the claim" to this extent, and that is all that is asked.

And it is submitted:

First—That the survey is of a tract of land entirely different from that confirmed by the board, and the District Court erred in approving it.

Second.—That the survey should be set aside and a new one ordered, directing the surveyor to extend the line from the "lone tree" eastward to the "Piedra Azul;" thence southerly along the base of the Sierra to the place known as Los Bueyes; thence to the head waters of the Arroyo del Monte de los Coches; thence to the northeast corner of Alviso's land; and thence by the courses already surveyed to the beginnig.

JOSEPH H. BRADLEY,

For Appellant.

In the Supreme Court of the United States.

DECEMBER TERM, 1864.

No. 115.

HEIRS OF JOSÉ HIGUERA, Appellants, *vs.* THE UNITED STATES, Appellees.	On appeal from the district court of the United States for the northern district of California.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

JAMES SPEED,
Attorney General.
JOHN A. WILLS,
Special Counsel for the United States.

IN THE SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1864.

No. 115.

HEIRS OF JOSÉ HIGUERA, Appellants, *vs.* THE UNITED STATES, Appellees.	On appeal from the district court of the United States for the northern district of California.

BRIEF IN AID OF ATTORNEY GENERAL OF THE UNITED STATES.

The claim of the appellants was confirmed by the board of land commissioners, and in December, 1856, a stipulation was entered into that further appeal in behalf of the United States would not be prosecuted. A survey of the land confirmed was made by a deputy United States surveyor, and approved by the surveyor general of the United States for California on October 12, 1859, in accordance with the decision of the Secretary of the Interior, to whom the matter had been appealed. Lester's Land Laws, &c., page 652.

This survey was ordered into the district court for examination, and exceptions filed by the claimants on the ground that a much larger quantity of land should have been included in the survey. After a careful examination the district court sustained the survey. A re-argument was applied for and granted, but the court adhered to its decision; and from the final decree the claimants now appeal to the court of last resort.

The appellants ask the Supreme Court to set aside a survey made by the surveyor general of the United States after his personal examination of the ground, and after the Commissioner of the General Land Office and the Secretary of the Interior had approved his contemplated action in the premises, and in the face of two decisions of the district court having jurisdiction under the act of June 14, 1860.

The question presented by the appeal is one of law and of fact. First. Does the decree of confirmation confirm to the claimants the land actually granted by the Mexican government to José Higuera; and, second, does the official survey truly locate the land confirmed by the decree? An examination of the record shows that, in 1821, José Higuera was put in possession of a tract of land which he had solicited from Governor Sola; and this tract, it is certain, was within the limits of the land claimed as pertaining to the pueblo of San José. In 1824 the colonization law was passed, and in 1828 executive regulations for the proper administering of that law were promulgated. In 1839, under the colonization law and the regulations made under it, Governor Alvarado conceded anew to Higuera the tract he had received from Sola in 1821, together with an augmentation *in the plain*, adjoining the Sola tract on the west. The two tracts conceded by Alvarado are shown on the diseño or figurative plan presented to the governor by Higuera, as required by the colonization law. No limitation of quantity is found in the concession, nor is any specific quantity mentioned by Higuera in his petition. No scale of distances is found on the diseño; but it is a very good representation of the land asked for, and conceded by Alvarado. As was almost universally the case, arising partly from the great variation of the needle, and partly from other causes, the points of the compass are erroneously laid down on the diseño; but this inaccuracy, when well known and easily identified natural objects are shown, is immaterial. The tract delineated is bounded (properly) on *the west* by the Arroyo de la Penetencia; on *the north* by an arroyo issuing from the hills and a dotted line showing the division of the mission from the pueblo lands; *on the east by a range of hills on which is situated a lone tree* surrounded with chemisal; and on *the south* by an arroyo issuing from the hills, and known as the Arroyo de los Coches, modified by a dotted line showing the result of the settlement of a controversy between Higuera and his neighbor Alvisu. The delineation of the plain, including the houses and cultivated fields of Higuera, being the augmentation made to the original grant by Sola, occupies two-thirds

of the diseño; while the remaining third shows the Sola tract, consisting of two ranges of hills enclosing a small valley, in which is situated a sausal (willow thicket) and a posa (well.) The word "Calaberas" is found written in the space representing the valley.

The topographical map made by Mr. Stratton shows correctly all that part of the country necessary to a full understanding of the merits of the controversy. The tract marked "Rancho los Tularcitos," and included within the lines shaded *red*, represents the official survey as finally approved by the district court, and which we claim is exactly the tract shown on the diseño. The Arroyo de la Penetencia, the Arroyo de los Coches, and the Arroyo de Calera, of Stratton's map, are easily identified with the same streams of the diseño. There can be no mistake as to the houses of Higuera situated at the foot of the hills; nor as to the valley enclosed by hills, in which valley is the sausal; nor as to the range of hills on which is situated the tree surrounded with chemisal, and along the crest of which range was run the eastern line of the official survey.

It is proven in the case that the peak shown on Stratton's map, 1,751 feet above tide-water, has been known for years to the former inhabitants of the country as the peak of Calaveras, from the fact that the Indians once resorted there to perform their heathenish rites. It signifies the "hill of skulls." The name "Calaveras" was gradually extended to the surrounding country; and a creek and two valleys now bear it—the larger valley to the east of the peak being in these days known as Calaveras valley, while the smaller one to the west of the peak is called "Little" Calaveras valley. The presence of the word "Calabera" in the valley shown on the diseño is thus accounted for.

It would seem that the tract officially surveyed is plainly the same tract delineated on the diseño; but, in the face of the decree of confirmation, which limited the land confirmed to the east line as afterwards surveyed, and which decree was not only not appealed from by the claimants, but accepted as final by their stipulation with the United States attorney, *they procured* a deputy surveyor (Twitchell) to include in his

survey most of the *larger valley lying to the east of Calaveras peak*. But the attention of Surveyor General Mandeville having been called to the matter, he refused to approve Twitchell's survey, *and went upon the ground in person*. The result of his examination was, that a survey should be made which would *exclude the valley lying east of the Calaveras peak*. He referred the whole matter to the Commissioner of the General Land Office. That officer sustained Mr. Mandeville, and the Commissioner, in his turn, was sustained by the Secretary of the Interior. This would have been final had not the Supreme Court, in Fossat's case, declared the jurisdiction of the district court to extend over these cases *until patent issued in accordance with the decree*, followed by the passage of the act of June 14, 1860. Under the Fossat decision the claimants brought the survey before the district court, which, after a patient investigation, sustained it. A rehearing was asked for and granted, but with the same result. The claimants now appeal to this court with the hope that a fertile valley, improved and beautified by the labor of the settlers, may be given to the *present* owners of the rancho.

In support of their pretensions they have produced witnesses to prove—1st, that the *possession given by Luis Peralta*, in 1821, of the tract granted by Sola, *included* the *larger* Calaveras valley; and second, that *Higuera had possession* of and *occupied that valley*. The testimony of these witnesses, however, is wholly unsatisfactory, and is disproved by the original papers.

It was necessary, under the colonization law of 1824, and the regulations of 1828, that Higuera should procure a ratification of his Sola grant; and in his petition to Governor Alvarado, in 1837, for such ratification, *together with an augmentation to the west, or in the plain*, he refers to the diseño transmitted by him with his petition as representing the land he *had occupied for more than twelve years*. Now this petition and map constitute *the highest kind of evidence*, which must prevail over the declarations of witnesses, if there be any conflict. It is utterly impossible to reconcile the calls of the diseño with the statements of the witness José Maria Alvisu, who swears he was present when

Luis Peralta gave the possession in 1821. And it is equally impossible to reconcile the statements of the witnesses, who testify Higuera occupied the larger Calaveras valley, with the statement of Higuera in 1837 to the governor that the diseño represented the land he had occupied for more than twelve years. Besides, even if Higuera had received possession under Sola of the larger valley, and had occupied it, he could not obtain a confirmation from the United States, because, unless he asked for a *new* grant from Alvarado, *he had abandoned it when in* 1837 *he asked the concession of the tract shown by the diseño.* Under the colonization law and regulations it was incumbent upon the petitioner *to show on his diseño the land solicited;* and in this case the governor granted that land, and no other.

It also appears from the original papers that the land granted by Sola was *within the limits of the land claimed by the pueblo of San José.* A reference to the map of the pueblo lands, on file in the case, shows the eastern boundary of those lands to have been *the crest* of the range of hills on which is situated the lone tree surrounded with chemisal—that tree being one of the landmarks.

It is not contended by me that in cases arising under the act of 1851 the decrees of confirmation are *final*, except as to the *validity* of the claim confirmed. Until the land confirmed has been located and segregated by an official survey, and that survey has become final either by limitation or by the approval of the courts, as provided by the act of June 14, 1860, the decree of confirmation remains interlocutory, and is subject to the revision of the Supreme Court if the case is brought before that court on appeal in pursuance of the act of 1860. The acts of 1851 and 1860 must be construed together; and a case confirmed under the former act, the appeal dismissed by the attorney general, and a survey made, might be rejected altogether by the Supreme Court, upon evidence of fraud, taken while the survey was under examination, as provided by the latter act. But it *is* contended, in a case like the present, where the United States made only a technical opposition to the claim before the board, not having produced a single witness, *where the claim was confirmed precisely as presented,*

and where the decree was acquiesced in by the claimants, and not only not appealed from but its finality acknowledged by their stipulation, that the description of the land granted as set out in the decree must be taken as better evidence than the declarations of witnesses taken at this late day in behalf of parties who have since become interested, *unless* an examination of the original papers discloses some conflict between them and the decree. But no such conflict appears. The decree calls for a line *from the lone tree along the Sierra to the line of the land of Alvisu—the diseño shows the same line, and so does the official survey.* The only conflict is between the position of the claimants when the decree of confirmation was entered, and their position now. Why should they *now* assail the decree?

The claimants rely upon the evidence produced by them tending to show that *Higuera had some sort of possession of the larger Calaveras valley.* But giving this testimony all the weight claimed for it, it fails to establish their right to that valley. *Mere possession,* without the production of a grant, or evidence in the archives showing that one issued or was intended to be issued, cannot be maintained against the United States under the treaty. In this case no grant was ever issued for *any* land. *The decree of concession, upon which the confirmation by the board was based, was produced from the custody of the claimants, not found in the archives.* Had a *grant* been produced for a *specific quantity* of land within larger exterior limits, including the valley in dispute, then and in such case evidence of the occupation and cultivation of that valley would have been admissible in order to enable the claimants to elect that portion if they thought it desirable. But the conceded land can only be located with the aid of the diseño; and the diseño shows *no occupation* in the *little* valley even. The occupation and cultivation shown by it *are in the plain and in the adjoining low hills.* No improvements of any kind are shown in the valley in which is the "sausal." If Higuera really did have any sort of possession of the *larger* valley, *he failed even to show that valley on his diseño,* consequently did not ask its concession. How can he ask the

United States to confirm to him land which he did not ask of the former government?

Even if the proof were satisfactory that the possession given by Luis Peralta in 1821 included any or all of the larger valley, the fact would not avail the claimants. The grant by Sola was made under the *Spanish* rule. Under the *Mexican* rule, after the passage of the colonization law, all Spanish grants had to be *revalidated*, and this was done, in several instances, by the Peraltas, among others. It was done in the case at bar; and the conclusion irresistibly follows that if the larger valley *was* included in the possession given in 1821, it *was abandoned* when Higuera, in 1837, applied to Alvarado, *and the land in the plain asked for instead*. The Mexican government was not bound to recognize Sola's grant unless revalidated, nor are the United States bound as the successors of Mexico.

But it is simply absurd to suppose that Higuera ever did claim the larger valley. The topography of the country shows that the *smaller* valley, shown on the diseño, was the valley of which possession was given in 1821. The testimony of José Maria Alvisu alone gives any color to the claim. If the larger valley had really been granted by Sola, occupied by Higuera, and afterwards conceded by Alvarado under Mexican law, why was not Alvisu called as a witness for the claimants before the board? Why were not other witnesses produced *then*, showing the possession of that valley? Alvisu was here in 1853–'54, and could have been produced as well then as in 1858. Would the claimants have signed a stipulation accepting a decree as *final* which cut them off from the enjoyment of the larger valley?

The whole thing is an *afterthought, suggested* to the parties now claiming the rancho by *the rejection of the Fuentes claim, which included the valley now in controversy*. Had José Higuera lived, the attempt to embrace that valley in the survey never would have been made. *He* well knew the land which had been conceded to him by Alvarado.

The court is respectfully referred to the printed brief sent herewith, which was filed in the district court when the case

was first submitted; and to the answer of the United States to the petition of the claimants for a rehearing. This answer will be found in the record.

Respectfully submitted:

JOHN B. WILLIAMS,
In Aid of Attorney General.

JULY, 1863.

Adopted as presenting substantially the views of the case entertained by the counsel of the United States.

JAMES SPEED,
Attorney General.

JOHN A. WILLS,
Special Counsel for the United States.

APPENDIX.

No. 228.

THE UNITED STATES *vs.* THE HEIRS OF JOSÉ HIGUERA. } In the district court of the U. S. for the northern district of California.

"LOS TULARCITOS."

BRIEF IN AID OF THE UNITED STATES DISTRICT ATTORNEY.

This is a case pending under the act of June 14, 1860, in regard to the survey and location of private land claims in the State of California.

In the year 1821, José Higuera, representing himself as an invalid soldier, and at that time mayordomo of the mission of San José, petitioned Governor Sola for the tract called *Los Tularcitos*, in order that he might settle and place his goods thereon.

On the 21st of April of the same year Governor Sola, by his marginal decree upon the petition of Higuera, referred the matter for information to the captain of the presidio of San Francisco, to the father ministers of the missions of San Francisco, San José and Santa Clara, and to the commissioner of the pueblo of San José, and directed the petitioner to appear before him with the document when the decree should be executed.

In June and July following, the *informes* required appear to have been obtained. They were all favorable. Those emanating from the authorities of the pueblo of San José declared the land to be a little over two leagues from the town, and within the domain of the pueblo.

On the 4th October, Governor Sola ordered the commissioner of the pueblo of San José to put José Higuera in possession of the tract *Los Tularcitos*, situate in the jurisdiction

of San José, previously running the lines and fixing the monuments on the four sides, and to communicate to the government the extent of the tract so measured, in order that the corresponding title might issue.

In pursuance of this decree, on the 23d October, 1821, possession was given, and measurement made of the tract, and a record of the proceeding added to the *expediente*, which was returned to the petitioner.—*Trans.* 23.

These proceedings were all prior to the colonization law of 1824, and the regulations of 1828, and as no title had been obtained from the government by the petitioner prior to the institution of the new order of things, he held the land merely by right of possession.

In March, 1830, José Maria Alvisu petitioned and obtained from the alcalde of the pueblo of San José a tract called *Las Milpitas*, to the south of and adjoining *Los Tularcitos;* and in 1834 he petitioned Governor Figueroa for a grant in fee of the same tract formerly granted him by the alcalde. In the latter part of 1835 Alvisu received the final grant from José Castro, governor *ad interim.*—*Exhibit Manderville*, No. 6

These proceedings on the part of Alvisu gave rise to a dispute between him and Higuera, who claimed that the land granted to the former encroached upon the tract, the possession of which had been given the latter under the decree of Governor Sola, in 1821. He accordingly petitioned Governor Alvarado, in October, 1835, that the tract of which possession had been given him in 1821, together with an augmentation, the whole represented on the diseño accompanying his petition, might be granted to him. The governor directed, by his marginal decree, that the possession asked by Alvisu, under his grants, should be suspended, until the dispute with regard to the line between him and Higuera should be settled by mutual agreement. This brought about an arrangement, whereby the *Arroyo de los Coches* was fixed upon as the boundary between the two ranchos, which being communicated to Governor Alvarado, on the 14th February, 1839, he conceded the land to Higuera which he had solicited, and which was shown on his diseño, subject to the agreed line. The *expedi-*

ente appears to have been re-delivered to Higuera, who seems to have made no effort to obtain a final grant and juridical possession, and who died intestate in the year 1845.—*Trans.* 37.

Soon after the organization of the board of land commissioners, under the act of Congress approved March 3, 1851, the heirs-at-law of José Higuera, by their attorney, Thomas B. Godden, presented their claim for confirmation under two petitions: one designating the land as *Llano del Abrevadero*, and the other as *Los Tularcitos—both evidently referring to the same land.* That for the *Llano del Abrevadero* was abandoned, and the other, for *Los Tularcitos*, pressed to a confirmation.—*Exhibit Mandeville, No. 5*; *Trans.* 3.

The petition for the tract under the name of *Llano del Abrevadero* discloses that the land for which confirmation was prayed was granted by Governor Sola to José Higuera, the *expediente* lost or misplaced, and no existing evidence in the archives but that uninterrupted possession was held by the grantee and his heirs from the date of the grant. The boundaries are set out as follows: "*On the north* by the *southern boundary or line of the mission of San José* (now the southern boundary of the ranch belonging to Fulgencio Higuera;) on the east by the *cerro* (mountain;) *on the south* by a *line which* is now the *present northern boundary line of the ranch of José Maria Alvisu;* thence along the *Arroyo de la Penetencia*, and by the estero on the shore of the bay of San Francisco, which estero is the *western boundary of said land.*" In the petition mentioned this description *is set out as a quotation;* but from what, does not appear.

The petition for the same tract, under the name of *Los Tularcitos*, simply describes the land as that which had been granted by Governor Sola, of the quantity and extent set forth in the espediente. A supplementary petition, presented by H. I. Thornton, esq., who succeeded Godden as attorney for claimants, sets out the concession by Governor Alvarado of the augmentation to the tract ordered to be measured by Governor Sola.

All the testimony taken before the board was in behalf of the claimants. The witnesses were Juan B. Alvarado, José Romero, José Castro, and Doña Carmen Sibrian de Bernal.

Alvarado says: The diseño is a sufficiently fair representation of the land embraced *in both these* grants.—*Trans.* 7.

Romero testifies as to occupation only; he was not asked as to boundaries.—*Trans.* 11.

Castro says: "The boundaries are accurately delineated on the diseño."—*Trans.* 13.

Mrs. Bernal says: "I am acquainted with the boundaries. They begin at the back of the house at the foot of the hill, the line running northerly *to a lone tree* surrounded with chemisal, at the top of the Sierra, the tree being visible from the house; from that tree Don José Higuera informed me the line ran to the other side of "Los Calaveras,' and from beyond there, down by the rear of the house of José Maria Alvisu, to the Arroyo de la Penetencia; from thence to an estero, and thence to the place of beginning. On Alvisu's side there is an arroyo. *The shape of the tract is somewhat like a parallelogram.*"—*Trans.* 19.

The claim was confirmed by the board in November, 1854, and the decree was signed by Commissioners Felch, Farwell, and Thompson. The land confirmed is thus described in the decree: "Beginning at the back side of the principal house on said rancho, standing at the foot of the hill, and running thence northwardly to a lone tree on the top of the Sierra, (which tree is known as a landmark;) thence east along the Sierra to the line of the land known as the rancho of José Maria Alvisu; thence southerly along the west line of said Alvisu's rancho till it intersects the Arroyo de la Penetencia; thence up said arroyo to an estuary (*estero;*) and from this point to the place of beginning."—*Trans.* 57.

In June, 1855, the transcript of the proceedings before the board was filed in the clerk's office of this court, and in September of the same year a notice of intention to prosecute the appeal was filed by the Attorney General of the United States, who afterwards notified the district attorney that appeal would not be prosecuted; and in pursuance of this notice a stipulation to that effect was signed by both the district attorney and the then attorneys for the claimants, on the 12th December, 1856. It must, therefore, be presumed that the claimants were satisfied with the decree in their favor.

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The court is now asked to inspect the plat of the official survey made under the decree of confirmation, with reference to that decree, and the testimony of the witnesses before the board. The exact conformity of this survey with the decree and the testimony is both apparent and real.

On the 23d December, 1856, under the order entered in pursuance of the stipulation before mentioned, instructions were issued to Deputy United States Surveyor E. Twitchell for making the final survey of the land confirmed; and that officer testifies he made the survey in the fall of 1857. Then, for the first time, *was the idea developed of including the Calaveras valley, lying eastwardly from the easterly line of the official survey;* and Mr. Twitchell endeavored, in his official capacity, to further the views of the *parties who had then acquired an interest in the land*, derived from the heirs of the original grantee, José Higuera. He accordingly so surveyed the land as to include the greater portion of Calaveras valley, but his survey was so evidently in conflict with his instructions that he was permitted to withdraw his field-notes, and to make and return the survey subsequently approved by the surveyor general, and now known to the court as the official survey. The surveyor general went upon the ground himself and made a careful examination, all the parties in interest being present.—*Exhibits Mandeville, Nos.* 1 *and* 2.

The claimants, or rather *those who had acquired an interest* under them, unwilling to give up a point of so much pecuniary importance to themselves, protested against the survey, and the surveyor general notified them he would submit the whole matter to the department. Testimony was accordingly taken before him by those interested and transmitted, with the report of the surveyor general, to the General Land Office, in June, 1858.—*Exhibit Manderille, No.* 3.

In June, 1859, the Commissioner of the General Land Office notified the surveyor general that the survey was approved, but that notice of appeal to the Secretary of the Interior having been filed, action must be suspended until a final decision. —*Exhibit Mandeville, No.* 4.

On the 1st August, 1859, the Commissioner of the General

Land Office notified the surveyor general that the Secretary of the Interior had affirmed the decision of that office.—*Ibid.*

Pending these proceedings in the executive department, the Supreme Court of the United States, in the case of the United States *vs.* Charles Fossat, decided that this court had jurisdiction over any land case until the issuance of a patent; and under the rules of practice adopted by this court in pursuance of that decision, the parties interested, in the name of the claimants, obtained an order directing the surveyor general to return a certified copy of the plat of his official survey, which was filed by him on the 20th October, 1859.

The exceptions filed by claimants to the official survey, in November, 1859, under the second and fourth objections, contemplate such an alteration as would conform to the survey attempted to be made by Twitchell, or, in other words, an attempt to carry out successfully the idea started for the first time in the fall of 1857.

In support of this position, which is shown by the plat of the attempted survey by Twitchell, the claimants filed, in February, 1860, a certified copy of the depositions taken by them before the surveyor general, and in April took the deposition of Mr. Twitchell, followed in June by the depositions of Antonio Chaboya and José Antonio Alvisu. The deposition of Twitchell was not finished at that time, the cross-examination having been suspended for the accommodation of the witness, and it was only after application to the court by the attorney in aid of the United States attorney, that his deposition was, without concluding the cross-examination, filed on the 6th December, 1860.

About the 1st of October, 1860, we first had notice that *the Twitchell programme was to be enlarged.* On the 5th of that month additional exceptions were filed by the claimants, by which they claim the eastern line to extend from a point called *Piedra Azul* southerly to another point called *Los Bueyes.* The difference between the Twitchell eastern line and the other may be ascertained by measurement, and is 120 chains, or one mile and a half—Twitchell's eastern line being 180 chains, and the other 300 chains.

In support of the position last assumed, the claimants ex-

amined José Fernandez, Fulgencio Higuera, and José Antonio Alvisu—the latter having been recalled.

It is contended by the United States that the *theory first* advanced by the claimants—the Twitchell theory—*conflicts with their last position*, and that *both* conflict with the papers and evidence upon which the claim was confirmed by the board of commissioners.

As no title was issued to Higuera anterior to the colonization law of 1824, his possession became subject to the provisions of that law, and was merged in his application to Governor Alvarado, who conceded to him the land shown on the diseño, without any limitation of quantity. But as Higuera petitioned Alvarado for a concession of the tract of which he had been put in possession under Sola, together with the augmentation to the west, and which connected tract he had occupied many years; and as his petition to Alvarado was induced by what he considered *the encroachment of Alvisu*, it is fair to presume that his diseño intended to represent both tracts, including the tract measured by Luis Peralta in 1821; and it is this measured portion of the tract which gave rise to this controversy, *the augmentation being considered by all parties as the western part* of the whole tract, bounded on that side by the Penetencia and the Estero.

The decree of Sola and the act of possession and measurement may be translated as follows:

OCTOBER 4, 1821.

Let José Higuera be put in possession of the place called *Los Tularcitos* by the commissioner of the pueblo of San José, *to which jurisdiction it belongs;* after making the surveys thereof, *and placing the landmarks in the direction of the four quarters of the compass*, let this government be informed as to the number of varas contained on each side, and this having been done, let the corresponding title of possession issue.

SOLA.

OCTOBER 23, 1821.

In compliance with the foregoing superior decree of the superior governor of the province, Col. Don Pablo Vicente

de Sola, ordering that *possession of the place called Los Tularcitos* be given to the invalid soldier, José Higuera, I visited the said place in company with three witnesses, Mariano Duarte, Joaquin Buelna, and Florentino Archuleta, and seeing that no prejudice would result to this community, and by virtue of the powers conferred upon me by our sovereign, Don Fernando VII, whom God preserve, *I gave possession of the said place* to the said invalid soldier, José Higuera, *designating on the south six hundred varas, on the north the same distance, on the west one thousand four hundred, and on the east six thousand and fifty;* the land included within these lines comprehends the said place of the *Tularcitos.*

In testimony whereof, I have affixed my signature, with the assisting witnesses, the day and year first above written.

LUIS PERALTA.

MARIANO DUARTE,
JOAQUIN BUELNA,
JOSÉ FLORENTINO ARCHULETA, } Witnesses.

It will be observed that *the act of possession does not state any beginning point of measurement,* if measurement there was; but taken in connexion with the governor's decree, it is plain the assignment of the land was made in conformity with it, to the end that the government might be informed of the number of varas on each side. By this rule *four lines were designated,* if the distances were accurately recorded in the act, such as is shown by diagram A, projected on a scale of eight hundred varas to an inch.—*See Diagram A.*

But this evidently is erroneous, for those lines cannot be joined at their extremities.

If designated from a central point, the result would be absurd, for a line measured east from such central point 6,050 varas, and west from the same point 1,400 varas, would give an east and west line of 7,450 varas, to be connected with a north and south line of only 1,200 varas.

There must have been *a mistake* in recording the length of one of the lines. Instead of 6,050 varas for the eastern line, probably 1,050 was meant, which would include a tract shown by diagram B, made on the same scale of 800 varas to an inch.—*See Diagram B.*

600 YARDS.
S.
1,400 YARDS.
W.
[A]
6,050 YARDS.
E.
600 YARDS.
N.
600 YARDS.
S.
1,400 YARDS.
W.
[B]
1,050 YARDS.
E.
600 YARDS.
N.

Such measurement corresponds remarkably well with the tract shown on the diseño, and by no other mode can the diseño be supposed to represent and include that measured tract.

There is *no scale* on the diseño by which to measure distances. It, like most of them, is a *picture*, and not a *map* of the tract. It was probably drawn at some point on the open plain, where the outline of the land delineated could be easily traced, *and the lone tree distinctly seen.* Consequently, the distance from the house immediately south from the *huerta* to the lone tree would appear much shorter to the eye than it really is; and in testing this by the diseño, we find the house just referred to and Alvisu's house separated by a space of five and one-half inches, and the same house (Higuera's) and the lone tree separated by a space of three and one-quarter inches; while the actual measurement on the ground shows the true distance between the houses to be 170 chains, and between Higuera's house and the tree 180 chains. In other words, to the eye of the designer, the apparent distance from Higuera's house to the tree was not much more than half that between the same house and Alvisu's house; in reality, the greater distance was from Higuera's house to the tree.

If, then, the diseño was drawn from any point on the plain from which the lone tree in the chemisal was visible, it is evedent the official survey includes all the land intended to be shown, for the ridge upon which that tree is situated ranges from 2,594 feet down to 1,235 feet (the tree itself being 1,988 feet) above the level of the sea; while the ridge east of it, *between which two lies the Calaveras valley, ranges from* 1,043 *feet up to* 1,898 *feet above the level of the sea,* and invisible to the eye of the person standing on the plain at the supposed point where the diseño was drawn. And this conclusion is the natural result of all that can be gathered from the documentary evidence, the testimony of all the witnesses before the board, and the decree of the board; from which decree, as has before been stated, no appeal was taken by the claimants.

The reasons, then, if any exist, for the extension of the official survey to the east, must be gathered from the evidence

produced by the claimants in support of their exceptions, which evidence is entirely of a parol nature, and will now be examined.

Certified copies of the testimony taken before the surveyor general in behalf of the claimants before referred to have been admitted in this case under stipulation. This testimony comes first in order.

José Maria Alvisu swears he was present as a spectator when the possession was given by Luis Peralta; that the measurement was commenced at an oak tree in the *Tularcitos*, which is still standing; that the boundary on the north was the *Arroyo de la Calera*, on the south the *Arroyo del Monte de los Coches*, on the east the *Sierra Moreno* or *Sierra Madre*; that they measured through the Calaveras to the foot-hills at the Sierra. On cross-examination he says, that in going from the *Tularcitos* to the Calaveras, *low hills only were crossed*; that no artificial monuments were made at the time of the measurement, the Sierra and the two arroyos forming the boundaries.

This witness was brought to support the Twitchell theory, and accordingly he made the measurers start from the tree in the *Tularcitos*, and go to the Sierra beyond the Calaveras valley, evidently to establish the 6,050-vara line from east to west. It has before been shown that if the measurement was made from a central point, the tract would have an east and west extension of 7,450 varas, with a north and south extension of 1,200 varas only—an absurd result, and contradicted by his statement, that the two arroyos formed the north and south lines, for instead of being 1,200 varas apart, the true distance between their nearest curves is 3,321 varas. His testimony is also contradicted by the diseño, which shows the *greatest length* of the *tract* (allowing for the variation of the compass) *to be from north to south*.

In June, 1860, this witness was again examined by the claimants under their first exceptions, and on his direct examination testifies nearly to the same effect as when examined before the surveyor general.

The next witness examined before the surveyor general

for the claimants was Nazario Galindo, who described the rodeo boundaries to be the two arroyos, and the sierra to the back of the Calaveras on the other side. He attempts to describe the natural objects shown on the diseño as existing on the ground in the Calaveras valley, but it is not shown that he was present when the diseño was made. This branch of the evidence, however, will be hereafter considered. The diseño contradicts his assertion that the two arroyos and the sierra to the east of the Calaveras formed the three boundaries, for no land is depicted on it east of the lone tree, near which heads the Arroyo de la Calera.

This class of evidence on the part of the claimants would not be complete without the testimony of Antonio Maria Pico, who accordingly *swears in the whole of the Calaveras valley.* He also is contradicted by the calls of the diseño.

Pedro Chaboya was the last witness examined for the claimants before the surveyor general. He includes the Calaveras valley within the limits of the tract long occupied by Higuera, but, in his answer to the second question, contradicts himself in advance. In that answer he says: "It (the rancho) is bounded on the north by the Arroyo de la Calera, *which runs to the Sierra Grande,* passing over the hills; on the east by the Sierra Grande, on the south by the Arroyito de los Coches, and on the west by the Arroyito de la Penetencia and the Esteros."

Now, *if the Sierra Grande,* which he describes as the boundary on the east, is the range in which the Arroyo de la Calera heads, *it must be the ridge on which is found the lone tree surrounded by chemisal,* for that arroyo rises to the west and north of that tree, and its waters find their outlet to the *west,* where they sink in the plain; while immediately upon the eastern side of that range head the waters which find their outlet *eastwardly* to the Calaveras creek, and through its channel to the Alameda river, which reaches the bay of San Francisco circuitously, passing by where Union City now is. The witness has evidently confounded the *valley west of the lone tree ridge with the valley east of it.*

After the return of the survey to this court, on the application of the claimants, they naturally called for their first wit-

ness, Mr. Twitchell, the United States deputy surveyor. He says he had a copy of the diseño, and of the testimony taken before the board, and knows he had the courses and distances run by Luis Peralta, as described in the act of juridical possession. He says he took the Tularcitos lake as a point, and ascertained how far the 6,050 varas would reach. He supposes a curved line shown on the diseño was intended to represent the Calaveras creek, and identifies the Calaveras valley as the place marked "Calaveras" on the diseño by its relative position to other objects, and from the fact that Calaveras valley has been known by that name for some years past. He admits, on his cross-examination, that he found no natural objects in that valley by which he could identify it as the valley shown on the diseño. His cross-examination was interrupted, and never resumed, otherwise he would have been called upon to explain how he identified the valley shown on the diseño with what is now known as Calaveras valley, with reference to the position of the lone tree surrounded with chemisal.

This witness evidently ignored his instructions, and the papers to which they referred, and followed the practice which partly caused the enaction of the law of June 14, 1860—*the practice of surveying confirmed ranchos in accordance with the wishes of the claimants, or of those holding under them.* His testimony develops clearly what has been called the Twitchell theory—that is, the assumption that the 6,050 vara line was to be *taken as an east and west line*, and consequently including a portion of Calaveras valley.

To support Twitchell's view, the claimants next called Antonio Chaboya to establish the locality of the place called Tularcitos, and José Antonio Alvisu, whose deposition in this connexion has been noticed already. Their testimony was taken in June, 1860.

In October was developed the enlargement of the Twitchell theory. Additional exceptions by the claimants ask for a line drawn from the *Piedra Azul* to *Les Bueyes*, passing by the termination of the 6,050-vara line established by Twitchell. This new line has a north and south direction, with a length

of over 7,000 varas, and is claimed to be one of the lines measured by Luis Peralta in 1821; and José Antonio Alvisn is examined, for the third time, to prove it, with the help of José Fernandez and Fulgencio Higuera. It would be *an act of cruel y* to criticise the testimony of Alvisu, an old man of over sixty years, of failing memory and impaired faculties.

Of the three views successively represented by the claimants, *one only can be true*—the one presented to the board, exemplified by its decree, acquiesced in by the claimants, and shown by the official survey.

The case has hitherto been considered on the testimony furnished by the claimants themselves, without reference to that filed in behalf of the United States, which will now be noticed.

To the deposition of James T. Stratton, a practical surveyor, is attached as an exhibit a topographical map of the whole country in dispute, and showing the lines of the official survey. The *green lines* were added by Mr. Twitchell to show, approximately, the lines of his attempted survey. "Los Bueyes" and "Piedra Azul" are marked in pencil at their respective locations as determined by the witnesses last examined by the claimants.—*Exhibit Stratton, No.* 1.

The accuracy of this map, topographically considered, is not disputed. Testing the diseño by it, the houses of Higuera and Alvisu, and the line of the hills where they are lost in the plain, appear to be quite accurately shown; and the lines of the official survey would seem to include all the land shown on the diseno except two parcels—one north and east from Alvisu's house, which was settled by the agreement between the parties; and the other on the northwest corner, which was included in Agua Caliente Rancho by agreement made not long ago.

The depositions taken before the surveyor general in support of his survey have also been filed by stipulation; and the court is asked to examine particularly the deposition of Henry C. Smith, a resident of that part of the country since 1845, who gives a clear account of the natural objects depicted on the diseño, and their situation within the lines of the official survey.

Agaton Ruis was also examined before the surveyor gen-

eral. He has known the rancho since 1831, when he acted as mayordomo for his relative José Higuera. He remained there until 1842.

José Romero, a witness examined before the board, has been examined for the government, and his testimony discloses what is meant by the word "Calaveras" on the diseño. The witness states his age to be sixty years; that he was born in the pueblo of San José, and has lived there most of the time. He says that as long as he can remember he has known a peak called the "*Cerrito de los Calaveras*," situated in a southerly direction from the lone tree surrounded by chemisal, and which can be seen from the plain. It was a place where the Indians kept their idols and worshipped.

This peak, which overlooks the valley of the Calaveras, as well as the plain to the west, no doubt gave the valley its name. On Stratton's topographical map it is marked as 1,751 feet above tide-water, and stands a little to the east of, but connected with, the range on which the lone tree is situated, and is clearly the *object* to which Mrs. Bernal refers in her examination before the board, and which she describes as "*Los Calaveras.*"

Agaton Ruis, who has been examined in this court, also testifies as to the situation of *Calaveras Peak*, and that *José Higuera pointed it out to witness as one of the boundaries.*

Francisco Alvisu, who has known the land since 1815, strongly corroborates Ruis and Romero. Alvisu says that Higuera pointed out to him the boundaries many years ago—the Tularcitos, where Higuera built his *first* house, an oak tree in the chemisal, the Calaveras Peak, and the Los Coches; evidently the boundaries which, including the possession given under Sola, are shown on the eastern part of the diseño.

It has already been noticed that the *informes* of the authorities of the pueblo of San José, made in obedience to the marginal decree of Governor Sola on the petition of Higuera, declare the land solicited to be within the limits of that pueblo. The attention of the court is now called to Exhibit No. 2, filed with the deposition of James T. Stratton, being a certified copy from the archives of the diseño forming part of the ex-

pediente relating to the lands of the pueblo of San José. This diseño was made in 1838, and is a remarkably correct delineation of the lands measured. On it is shown the land embraced by the official survey in this case *inside* the lines claimed by the pueblo, while the Calaveras valley is shown *outside* those lines. The lone tree surrounded by chemisal, shown on the diseño of Higuera, is found on this of the pueblo lands, and constitutes the northeast corner of both.

The evidence afforded by the diseño of the pueblo lands in support of the official survey in this case is of the most unmistakable character, and cannot be successfully controverted. Bear in mind that the diseño in this case is a *picture*, while that of the pueblo lands partakes of the character of a *plat*, having been made from actual measurement, and the demonstration is complete.

It has before been stated that José Antonio Alvisu, who swears he was present at the possession given in 1821, describes the measurement as having been made to the Sierra. To show *what was considered as the Sierra at that time*, by the rancheros in that vicinity, the United States have filed certified copies of the diseños of José Maria Alvisu, the colindante of Higuera on the south, and Fulgencio Higuera, the colindante of José Higuera on the north, (Exhibits Mandeville, Nos. 7 and 8.) On both is shown the house of José Higuera, and on the former is designated "Sierra Alta," evidently the range on which is situated the lone tree. On that of Fulgencio Higuera, the hills at the foot of which José Higuera's house is shown, are called "Lomas," and the range to the east of them, being a continuation of the range on which the lone tree is situated, is called "Sierra." An examination of these diseños in connexion with the topographical map shows unmistakably the range which was considered and called "Sierra," by the people who occupied the rancho immediately to the west of it; and whether a measurement was actually made or not when the possession was given under Sola, it is plain that when on the "place called Los Tularcitos," Luis Peralta and his assisting witnesses must have taken the range on which is situated the lone tree as the Sierra, or natural boundary of the tract on the east. José Antonio Alvisu states

they measured through the Calaveras to the foot-hills of the Sierra, but he also states that in going from the Tularcitos to the Sierra, *low hills only* were crossed; and Francisco Alvisu says that *anywhere about there was called "Calaveras,"* though the proper place known by that name *is the peak.*

It is not denied that the cattle of Higuera sometimes wandered into Calaveras valley, and so did the cattle of other rancheros. There were no fences, and cattle are not noted for observing and respecting boundary lines.

The petition of the claimants, and the evidence in support of it before the board; the decree of the board, signed by the attorney for the claimants, and from which they took no appeal, but joined in a stipulation giving it finality; the petition of the claimants for the land under the name of "Llano del Abrevadero," evidently setting out the boundaries then claimed, and described by them to their attorney; an examination of the diseño in the case, those of the colindantes Alvisu and Fulgencio Higuera, and that of the pueblo lands in connexion with the topographical map made by Stratton; and the parol testimony showing the boundaries on the east, north and south to be the Sierra on which is situated the lone tree, and the two arroyos, the latter having their rise in the former, and establishing beyond controversy the natural object known in those days as "Calaveras," indicated on the diseño, and alluded to by Mrs. Bernal in her testimony before the board, must surely outweigh the inconsistent and doubtful testimony of José Antonio Alvisu, and the slight evidence afforded by the wandering of cattle into the Calaveras valley. And in this connexion, *the discrepancies* between the claim as confirmed, and that attempted to be established by the first survey of Twitchell, and *between both these* and the *claim now sought to be* maintained, are significant.

Mr. Twitchell testifies he commenced making his survey in the fall of 1857; and it has been urged in this brief that the idea was then first developed of including Calaveras valley within the survey. It was conceived in the latter part of the summer of that year, when this court rejected the claim of

José Maria Fuentes for eleven leagues of land, *including the very land now in controversy. The United States were not aided by the claimants in this case.* So far as any action on their part is concerned, the claim was good; and we must presume that, as between the Higueras and those representing Fuentes, the former had no adverse title to any portion of the land claimed by the latter. The Fuentes petition was filed in the land commission on the 18th December, 1852, not many months after those of the heirs of Higuera; *and the present attorney for the claimants signed the decree in that case as well as in this.* It is incredible that, for the long space of five years, if the claimants in *this case* honestly considered the Calaveras valley as part of their land, they should have suffered the Fuentes case to be prosecuted without an effort to defeat it. *But there is proof that they did not claim that valley,* for the notice of appeal from the decision of the board in the Fuentes case was signed by the same gentlemen who joined with the district attorney in the stipulation dismissing the appeal in this case—Messrs. Thornton, Williams, and Thornton. No one will accuse those gentlemen of endeavoring to advance the interest of one client at the expense of another. The truth is, the decree of the board gave the claimants all they asked, and all they were entitled to; and the claim now set up to Calaveras valley was evidently suggested by the rejection of the Fuentes claim.

The writer of this brief appears on behalf of *the settlers* in Calaveras valley, and in aid of the district attorney, under the act of June 14, 1860. His clients are not "squatters." *They settled* in the valley many years ago, believing it to be public land. They have reclaimed a wilderness, and made it the abode of civilization. Their homes and possessions are limited to one hundred and sixty acres, which each have improved and beautified, until the temptation to possess the fruits of their labor has become too strong for the virtue of the claimants. To this court they confidently look for protection from those who would drive them and their families from homes consecrated by honest labor, and compel them to begin the world anew.

It is respectfully submitted that the official survey be approved by the court.

JOHN B. WILLIAMS,
Attorney for the Settlers.

JANUARY, 1861.